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IN THE

Supreme Court of the United States

UNITED STATES OF AMERICA,

Petitioner,

v.

STATE OF GEORGIA, *et al.*,

Respondents.

TONY GOODMAN,

Petitioner,

v.

STATE OF GEORGIA, *et al.*,

Respondents.

On Writs of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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QUESTION PRESENTED

Whether Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 to 12165, validly abrogates state sovereign immunity for suits for damages by inmates alleging disability-based discrimination by state prison officials.

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STATEMENT

This case asks whether Congress validly abrogated the States' Eleventh Amendment immunity in Title II of the Americans With Disabilities Act of 1990 (the "ADA"), 104 Stat. 337, 42 U.S.C. §§ 12131-12165, as applied to suits for damages brought by disabled state-prison inmates. More specifically, it presents the question whether *Tennessee v. Lane*, 541 U.S. 509 (2004), which held that Congress, in enacting Title II of the ADA, validly abrogated state sovereign immunity "as applie[d] to the class of cases implicating the accessibility of judicial services," *id.* at 531, extends to state prison inmates who challenge the actions and omissions of state prison administrators.

As this Court's decisions in *City of Boerne v. Flores*, 521 U.S. 507 (1997), and its progeny have demonstrated, one of the few limitations imposed by the United States Constitution on such otherwise-sensible measures as the ADA arises where one sovereign attempts to impose a money-damages remedy on another sovereign. No State could impose such an obligation upon the federal government, or upon another State. In our government of "dual sovereigns," *Gregory v. Ashcroft*, 501 U.S. 452, 457 (1991), the Eleventh Amendment similarly cabins (though it does not absolutely forbid) the power of Congress to pass laws that seek to give citizens the ability to sue an unconsenting state for damages. *See, e.g., Board of Trs. of Univ. of Ala. v. Garrett*, 531 U.S. 356 (2001).

A State's Eleventh Amendment immunity may be abrogated only when Congress expresses its intent to do so, *and* properly acts pursuant to a constitutional provision granting it the right to abrogate. Section 5 of the Fourteenth Amendment, also known as the Enforcement Clause, provides the primary avenue through which Congress can abrogate a state's Eleventh Amendment immunity. *See Seminole Tribe v. Florida*, 517 U.S. 44, 59-66 (1996). Under § 5, Congress may enact legislation allowing private

individuals to sue the States for damages only if such legislation is limited to the purpose of "enforcing, by appropriate legislation" the substantive guarantees of the Fourteenth Amendment. *City of Boerne*, 521 U.S. at 517-18; *Lane*, 541 U.S. at 554 (Scalia, J., dissenting). That, in turn, requires the Court to determine what constitutional guarantee required remediation, whether Congress was in fact responding to a widespread and intractable problem of unconstitutional state discrimination, and if so, whether Congress's chosen remedy was proportional and congruent to these constitutional violations.

The resolution of each of these questions should lead the Court to conclude that Congress did not validly abrogate state Eleventh Amendment immunity as applied to the class of cases where disabled state inmates seek money damages for denial of access to "services, programs, or activities." *See* 42 U.S.C. § 12132. Accordingly, the Court of Appeals' judgment should be affirmed.

Briefly stated, the facts of this case are as follows:

1. Petitioner Tony Goodman, a paraplegic with a prior felony conviction, returned to a state prison in 1995 after being convicted of aggravated assault, possession of cocaine with intent to distribute, and possession of a firearm by a convicted felon. Goodman had a domestic dispute with his live-in girlfriend outside their home, and he shot at her with a gun. *Goodman v. State*, 237 Ga. App. 795, 516 S.E.2d 824 (1999). When the shot missed, the woman ran inside and called 911. According to trial testimony, the gun jammed and Goodman chased her down, got out of his wheelchair, and beat her with the gun. When police arrived, they found a fight in progress. The woman was cut and bruised and "her blood was splattered on the wall." *Id.*, 516 S.E.2d at 825. Police officers then found 22 pieces of crack cocaine. *Id.* at 795-96, 516 S.E.2d at 825. Goodman claimed at trial that he did not know where the drugs had come from, but "theorized that [his brother and girlfriend] were having an affair and

that they placed the gun and cocaine on him in an elaborate scheme to frame him." *Id.* at 796, 516 S.E.2d at 826. The jury convicted Goodman and he was sentenced to a term of years in the Georgia state prison system.

2. Goodman, who has filed more than 60 lawsuits since his incarceration in the Georgia State Prison (*see* Br. in Opp. to Cert. 1-2 n.1), filed this civil action in federal district court in January 1999. J.A. 27.

a. Goodman's *pro se* complaint alleged a variety of wrongs, ranging from the temperature in his cell in the Georgia State Prison (J.A. 38) to the lighting in the facility. J.A. 48. Relevant to the question before this Court are the following claims and allegations:

—That the Department of Corrections violated his ADA rights when they transferred him from a "medical prison" to Georgia State Prison and denied or excluded him from participation in Mental Health/Mental Retardation programs and activities. J.A. 34.

—That he is entitled to relief for "his continued confinement in segregated environment, on the grounds of unlawful disability-based discrimination. Defendants have confined Plaintiff to [the Georgia State Prison] where that Plaintiff could be appropriately treated in more integrated community setting." Goodman added that "the failure to provide the most integrated services appropriate to the needs of disabled persons constitutes unlawful disability-based discrimination. Here the Defendants has [*sic*] violated the core principle underlying the A.D.A.'s integration mandate." J.A. 35.

—That the unit he lived in "lacks facilities for the disabled 'for hygiene, drinking and performing body excretion functions.'" J.A. 39.

—That he was given no assistance by staff in using the toilet and getting to his bed and has thus suffered injuries. J.A. 39.

—That he was kept "in a very small cell (12 feet long and 3-feet wide) which he can not [turn] his wheelchair around in side of this cell." J.A. 38-39.

—That he has "been forced to sit in his own waste, denied of catheter, denied of rehabilitative exercises, denied of assistance in being transferred from his w/c [*sic*], to the bed all of which resulted, among other things, in the Plaintiff not getting a bath or a shower for (10) months." J.A. 43.

—That he could not access the prison law library. J.A. 41-42.

b. In other papers, which the Court of Appeals also considered, Goodman alleged that he was injured in transferring to or from his toilet. He says he fell and broke his right toe and crushed his right knee on five different occasions between August 1998 and April 1999. J.A. 55. He alleges that within one month between mid-March and mid-April 1999, he broke the same toe and crushed the same knee three times from toilet-transfer falls. J.A. 55. He also claims that, on August 26, 1998, the toilet seat in his cell was not stable, and so he fell when he "hurl[ed]" himself onto the toilet, in turn causing an epileptic seizure. J.A. 55. He alleges he once defecated and urinated on himself and, when he requested cleaning supplies and assistance from staff members, they refused. J.A. 65.

c. Finally, in his Statement of Undisputed Facts in support of his motions for Summary Judgment, Goodman alleged he had been denied certain "Privileges and Rights" granted to other inmates at his security level, including "counseling services, educational services, college program, vocational training, recreation activities, freedom of movement in the unit and institution, television, phone calls, entertainment, and religious rights, also we are being denied of medical supervision and education concerning 'diabetes and hypertension.'" J.A. 65, 83-84.

d. The State has continually denied Goodman's factual allegations (J.A. 72-73, 93-95), and has pointed out to the

courts that Goodman has at numerous times throughout this case contradicted his material factual allegations.

3. In 2001, the district court dismissed Goodman's complaint on summary judgment (Goodman Pet. App. 24a-28a), and in 2004, the Court of Appeals for the Eleventh Circuit affirmed that judgment in part, and reversed it in part. *Id.* at 1a-23a.

a. The district court granted summary judgment on Goodman's § 1983 claims against the individual defendants under the Eighth Amendment because, as the Eleventh Circuit later agreed, "Goodman's complaint was less than a model of clarity." Goodman Pet. App. 17a. The Eleventh Circuit reversed, holding that "the act of dismissal, without leave to amend, was too severe a sanction" for the complaint's deficiencies. *Id.* Thus, Goodman's Eighth Amendment claims were reinstated, on the condition that he file an Amended Complaint when the case returns to the district court. *Id.* at 17a-18a.[1]

b. The district court also granted summary judgment on Goodman's Title II ADA claims for damages, on the ground that Congress did not validly abrogate the States' Eleventh Amendment immunity in passing Title II of the ADA. Goodman Pet. App. 27a (citing *Board of Trs. of Univ. of Ala. v. Garrett*, 531 U.S. 356 (2001)). The Eleventh Circuit affirmed "the magistrate judge's grant of summary judgment to all the defendants on Goodman's ADA claims for monetary damages as barred by the Eleventh Amendment." Goodman Pet. App. 19a. The Eleventh Circuit relied on its

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[1] The Eleventh Circuit also held that some of Goodman's claims "are obviously frivolous," and it thus limited him to three claims on which to build a § 1983 case for trial, if he can sufficiently amend his Complaint so as to state claims of rights violations by individual Respondents: (1) that he cannot move his wheelchair in his cell; (2) that he was forced to sit in his own waste because prison officials refused to provide assistance; and (3) that the care given to him at GSP amounts to "'deliberate indifference' to his serious medical condition of being partially paraplegic." Goodman Pet. App. 18a.

prior decision in *Miller v. King*, 384 F.3d 1248 (11th Cir. 2004), in which it had held: "A requirement of reasonable accommodations for a qualified, disabled prisoner in the prison's educational, recreational and job-training programs, for example, bears no permissible prophylactic relationship to deterring or remedying violations of disabled prisoners' right to be free from cruel and unusual punishment." *Id.* at 1275. Even while acknowledging "that § 5 authorizes Congress to deter Eighth Amendment violations by prohibiting 'a somewhat broader swath of conduct' than that prohibited by the Eighth Amendment," the court in *Miller* ultimately held that "Title II prohibits far more state conduct and in many more areas of prison administration than conceivably necessary to enforce the Eighth Amendment's ban on cruel and unusual punishment." *Id.* at 1274.

c. The Eleventh Circuit held that Goodman could proceed on his ADA Title II claim for injunctive relief. Goodman Pet. App. 19a-21a. The State has not cross-petitioned from that ruling.

4. The United States (which had intervened in the Eleventh Circuit to defend the validity of Title II's abrogation of the States' sovereign immunity) and Goodman each petitioned this Court to review the judgment of the Eleventh Circuit in this case, presenting questions regarding the validity of Congressional abrogation of sovereign immunity "as applied to the administration of prison systems" (No. 04-1203), "for suits by prisoners with disabilities challenging discrimination by state-operated prisons" (No. 04-1236). On May 16, 2005, this Court granted both petitions and consolidated the cases.

SUMMARY OF THE ARGUMENT

Title II of the ADA is not validly applied to allow state prisoners to bring suits for damages, as that title is not "appropriate legislation" under § 5 of the Fourteenth Amendment.

I. The first step in the congruence-and-proportionality inquiry prescribed by this Court's precedents is to "identify with some precision the scope of the constitutional right at issue." *Garrett,* 531 U.S. at 365. Discrimination against the class of disabled persons has always been considered by this Court as subject only to constitutional rational-basis review, *City of Cleburne v. Cleburne Living Center,* 473 U.S. 432, 446 (1985), and when prisons and prisoners are involved, constitutional rational-relationship review, and heightened deference to the actions of prison officials, is the norm. *Turner v. Safley,* 482 U.S. 78, 89 (1987). The claimed prisoner rights of access to services, programs, and activities would thus merit the lowest level of constitutional protection, which takes this case outside of this Court's decisions in *Tennessee v. Lane,* 541 U.S. 509 (2004) (access to courts), and *Nevada Department of Human Resources v. Hibbs,* 538 U.S. 721 (2003) (gender-based discrimination), both of which involved classifications subject to heightened constitutional scrutiny, which in turn makes it "easier for Congress to show a pattern of state constitutional violations." *Id.* at 736.

II. Because "Congress' § 5 authority is appropriately exercised only in response to state transgressions," *Garrett,* 531 U.S. at 368, the next step in the congruence-and-proportionality analysis is to determine whether Congress had a record demonstrating a "widespread and persisting" pattern of unconstitutional discrimination against disabled state prisoners with respect to the provision of programs, services, and activities. It did not. The legislative history of the ADA, in fact, was concerned primarily with integrating "persons with disabilities into the economic and social mainstream of American life," H.R. Rep. No. 101-485, Pt. 2, at 50 (1990), *reprinted in* 1990 U.S.C.C.A.N. 303, 304, which is the polar opposite of the imprisoned inmate, who is by definition *removed from* society's "mainstream." *See Palmer v. Hudson,* 468 U.S. 517, 526 (1984). It is therefore not surprising that the legislative record demonstrates little

in "the prison context," holding that "lawful incarceration brings about the necessary withdrawal of many privileges and rights," and that state prison officials are entitled to a broad range of discretion in the performance of their duties, *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 348 (1987) (internal quotation marks and citation omitted), there is not a sufficient "congruence" or "proportionality" between Title II of the ADA and any "historical experience" (*South Carolina v. Katzenbach*, 383 U.S. 301, 308 (1966)) with state prisoner access to programs and services. Indeed, there is little to no record of such constitutional violations of disabled prisoners' rights in the state-prison context.[2]

I. MOST ACTIONS BY STATE PRISON OFFICIALS, AND DISTINCTIONS BASED ON DISABILITY, ARE SUBJECT TO DEFERENTIAL CONSTITUTIONAL REVIEW

"[T]he first step" in the *City of Boerne* congruence-and-proportionality test is to "identify with some precision the scope of the constitutional right at issue." *Garrett*, 531 U.S.

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[2] A suit "seeking to impose liability which must be paid from public funds in the state treasury is barred by the Eleventh Amendment," *Edelman v. Jordan*, 415 U.S. 651, 663 (1974), for "[a] general federal power to authorize private suits for money damages would place unwarranted strain on the States' ability to govern in accordance with the will of their citizens." *Alden v. Maine*, 527 U.S. 706, 750-51 (1999). Petitioner Goodman's Title II claims seek money damages that would be paid from public funds from the state treasury, and are thus barred for the reasons set forth in this brief. That is the only issue regarding relief before this Court, and Respondents invoke the Eleventh Amendment only to protect the public fisc.

Petitioners nonetheless blur the line between damages and injunctive relief as though the question of injunctive relief for prisoners is also before the Court. Respondents do not seek to take away from inmates the right to pursue appropriate injunctive relief, such as the injunction requiring the installation of a grab bar hypothesized by Petitioner Goodman. (Goodman Br. 37) It should be noted, however, that Goodman did not make such a direct request in his Complaint or in his emergency motion for a temporary restraining order. J.A. 53-58.

concern with inmates in state prisons; what few references to prisons and prisoners exist in the legislative record are scattered, anecdotal, or—in the case of the United States' reliance on the testimony of Cindy Miller (U.S. Br. 23)—demonstrably miscited.

Petitioners' efforts to overcome these deficiencies in the legislative record with a cataloging of judicial decisions also fail. Over two-thirds of the cases Petitioners cite for this purpose were decided *after* the passage of Title II of the ADA, and thus fail to demonstrate an existing constitutional problem. Of the few cases that were decided before passage of the ADA, even fewer of them found a constitutional violation at all, and most of the remaining ones involved preliminary rulings, generalized attacks on prison conditions or medical services applicable to disabled and non-disabled inmates alike, or challenges to conditions in non-State prisons. The few of Petitioners' judicial decisions that arguably demonstrate unconstitutional treatment of disabled state prisoners, *by reason of their disabilities,* are so few and sporadic that they cannot possibly constitute the "widespread and persisting" problems of state discrimination that would have to exist before Congress could abrogate the states' sovereign immunity in this area.

III. Title II of the ADA is not a proportionate and congruent remedy for any history of unconstitutional discrimination against disabled state prisoners. That statute demonstrates none of the hallmarks of calibrated remedial legislation; rather, the relevant portions of Title II appear in the part of that title entitled "generally applicable provisions." Moreover, there is no indication in the statute that Congress, in enacting Title II, took into account in any way the special context of prisons and prisoners—not the differences in the constitutional rights held by state prisoners, and not the deference accorded to prison administrators.

Nor is Title II proportional and congruent when considered against Goodman's alternative argument that Title II is a constitutional means for enforcing the Cruel and Unusual Punishments Clause. Even putting aside the issue of whether that argument is "fairly included" within the "discrimination"-based question presented by Goodman, Title II would not be "congruent" to that constitutional right, because it would reduce a disabled prisoner's burden of proof from "deliberate indifference to serious medical needs" to a simple denial of services, programs, or activities. Moreover, viewing Title II as a federal remedy for violations of the Cruel and Unusual Punishments Clause would make it a seriously disproportionate remedy: It would give prisoners with disabilities, and *only* prisoners with disabilities, the right to enforce the Cruel and Unusual Punishments Clause.

ARGUMENT

"Congress may subject nonconsenting States to suit in federal court when it does so pursuant to a valid exercise of its § 5 power." *Garrett*, 531 U.S. at 364. Section 5 of the Fourteenth Amendment grants Congress the "power to enforce, by appropriate legislation," the substantive guarantees of § 1, including "by prohibiting a somewhat broader swath of conduct" than that "forbidden by the Amendment's text." *Kimel v. Fla. Bd. of Regents*, 528 U.S. 62, 81 (2000). Nonetheless, to validly abrogate the States' historic immunity from money-damages suits, § 5 legislation that reaches beyond § 1's guarantees must exhibit "congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end." *City of Boerne*, 521 U.S. at 520; *see Garrett*, 531 U.S. at 365; *Lane*, 541 U.S. at 522. As the Court observed in *City of Boerne*, "Congress does not enforce a constitutional right by changing what the right is." 521 U.S. at 519.

Particularly in view of the fact that disability-based classifications have always been subject to rational-basis review, and in further view of this Court's decisions, relevant

at 365; *Lane*, 541 U.S. at 522. Because Congressional power under § 5 is not "plenary" but is instead "remedial," *City of Boerne*, 521 U.S. at 522, judicial review of enforcement legislation must first include the identification of the Fourteenth Amendment "wrong" Congress sought to remedy. *Fla. Prepaid Postsecondary Educ. Expense Bd. v. College Sav. Bank*, 527 U.S. 627, 639 (1999), *citing City of Boerne*, 521 U.S. at 525. Only then can the "proportionality and congruence" of the congressional remedy be evaluated. In this case, the rights at issue are the rights of disabled state prisoners to not be denied, "by reason of . . . disability," "participation" in or "benefits of the services, programs, and activities of a state entity." 42 U.S.C. § 12132; *see, e.g., Garrett*, 531 U.S. at 365.

A. Disability-Based Classifications Are Subject To Rational-Basis Review

"[C]lassifications based on disability violate [the Fourteenth Amendment] if they lack a rational relationship to a legitimate governmental purpose." *Lane*, 541 U.S. at 522; *see Garrett*, 531 U.S. at 366; *City of Cleburne*, 473 U.S. at 446. There is no general fundamental constitutional right to state programs and services possessed by the class consisting of disabled persons. *Garrett*, 531 U.S. at 367-68; *Lane*, 541 U.S. at 522 ("Title II, like Title I, seeks to enforce this prohibition on irrational disability discrimination."); *see Hibbs*, 538 U.S. at 735-36 ("[I]n order to impugn the constitutionality of state discrimination against the disabled or elderly, Congress must identify, not just the existence of age- or disability-based state decisions, but a 'widespread pattern' of irrational reliance on such criteria.") (quoting *Kimel*, 528 U.S. at 90).

The fact that disability-based classifications receive only the most deferential constitutional review is an important consideration governing the congruence-and-proportionality inquiry in this case. In *Hibbs* and *Lane*, the only two of this Court's recent decisions to uphold congressional abrogation,

the fact that the asserted rights at issue were subject to heightened constitutional scrutiny made a critical difference in both analysis and result. In *Hibbs*, for example, the Court distinguished its prior decisions in *Garrett* and *Kimel* on the ground that, in the Family and Medical Leave Act of 1993, "Congress directed its attention to state gender discrimination, which triggers a heightened level of scrutiny"; because the standard of constitutional review for gender-based discrimination "is more difficult to meet than our rational-basis test—it must 'serv[e] important governmental objectives' and be 'substantially related to the achievement of those objectives'—it was easier for Congress to show a pattern of state constitutional violations." *Hibbs*, 538 U.S. at 736 (quoting *United States v. Virginia*, 518 U.S. 515, 533 (1996) (citation omitted, brackets in original)).

So, too, *Lane* upheld congressional abrogation of sovereign immunity under Title II of the ADA, as "applie[d] to the class of cases implicating the accessibility of judicial services," 541 U.S. at 531, on the ground that it was a congruent and proportional response to a legislative and historical record demonstrating the "'difficult and intractable proble[m]'" of disabled persons' "access to the courts." *Id.* (quoting *Hibbs*, 538 U.S. at 737) (brackets in original). As the Court explained, "Title II, like Title I, seeks to enforce this prohibition on irrational disability discrimination. But it also seeks to enforce a variety of other basic constitutional guarantees, infringements of which are subject to more searching judicial review." *Id.* at 522-23. Indeed, in concluding that there was a history and pattern of unequal treatment of the disabled with respect to access to the courts, the Court's opinion cited *Hibbs* and explicitly relied on the "heightened standard of judicial scrutiny" that applies both to gender-based distinctions and to burdens on the access to courts: "Title II is aimed at the enforcement of a variety of basic rights, including the right of access to the courts at issue in this case, that call for a standard of judicial review at least as searching, and in some cases more searching, than

the standard that applies to sex-based classifications." *Id.* at 529 (citing *Hibbs*, 538 U.S. at 735-37).

There is good reason for the distinction drawn by *Hibbs* and *Lane*. It is "easier for Congress to show a pattern of state constitutional violations" in areas where such heightened levels of scrutiny are applied (*Hibbs*, 538 U.S. at 736), because heightened constitutional scrutiny reflects a judicial judgment, based on history and experience, that such violations are more commonplace, more invidious, and thus in greater need of judicial remediation. A heightened standard of constitutional scrutiny carries with it a concomitantly lower burden of proof for plaintiffs—and, in the case of distinctions subject to the highest level of constitutional review, "strict scrutiny," history and experience teaches that the likelihood of invidious discrimination is so great that simply demonstrating the existence of the different treatment shifts the burden of disproving a violation to the government.

But this case—in sharp contrast to *Hibbs* and *Lane*—presents no distinction or other governmental action deserving of a heightened standard of constitutional scrutiny. A disabled state prisoner here seeks to enforce, via claims for money damages against the State, a wide array of claimed rights to programs and services, ranging from a right to adequate sanitation in his cell to a right to television. (J.A. 34-48) The differences in legal treatment between prisons and other public institutions, and between fundamental and non-fundamental rights, are crucial to understanding why the legislative and historical record before Congress shows no similar constitutional problem of access by the disabled in the context of State prisons for which Title II could be said to be a "congruent and proportional response."

B. Constitutional Review Of Disability-Based Classifications In The Prison Context Is Further Constrained By The Essential Nature Of Incarceration And The Rule Of Deference To Prison Officials' Actions

Even beyond the deferential rational-basis review generally provided to disability-based legal classifications, *see Garrett*, 531 U.S. at 366, there is an additional and critical factor that "applies to the class of cases implicating" access to programs and services in state prisons (*Lane*, 541 U.S. at 533-34): the historical deference granted to prison administrators in the performance of their duties and the classification of inmates.

Because of the basic nature of state imprisonment, it is difficult for any state prisoner, disabled or not, to advance a plausible constitutional claim for deprivation of access to programs and services. "'Lawful incarceration brings about the necessary withdrawal of many privileges and rights, a retraction justified by the considerations underlying our penal system.'" *O'Lone*, 482 U.S. at 348 (quoting *Turner v. Safley*, 482 U.S. 78, 89 (1987)). "Prisons, by definition, are closed societies, populated by individuals who have demonstrated by their inability, or refusal, to conform their conduct to the norms demanded by a civilized society. Of necessity, rules far different from those imposed on society at large must prevail within prison walls." *Jones v. N.C. Prisoners' Labor Union*, 433 U.S. 119, 137 (1977) (Burger, C.J., concurring). Indeed, some rights considered fundamental outside prison walls are nonexistent or virtually nonexistent within them.[3]

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[3] For example, "the Fourth Amendment proscription against unreasonable searches does not apply within the confines of the prison cell." *Palmer v. Hudson*, 468 U.S. 517, 526 (1984). States may constitutionally prohibit convicted felons from voting. *See, e.g., Richardson v. Ramirez*, 418 U.S. 24, 56 (1974). And this Court has held that the Constitution creates no liberty interest in a prisoner seeking to

For these reasons, claimed deprivations of constitutional rights inconsistent with imprisonment are subject to review only for a rational relationship to legitimate government interests, even where the rights asserted may be said to be fundamental. "[A prison regulation] is valid if it is reasonably related to legitimate penological interests'." *Turner*, 482 U.S. at 89 (quoting *Jones*, 433 U.S. at 128). The "evaluation of penological objectives is committed to the considered judgment of prison administrators, 'who are actually charged with and trained in the running of the particular institution under examination.'" *O'Lone*, 482 U.S. at 349 (quoting *Bell v. Wolfish*, 441 U.S. 520, 562 (1979)). When a state correctional institution is involved, the deference of the federal courts is even more appropriate. *Turner*, 482 U.S. at 85.

Consistent with these principles, the Court in *Overton v. Bazzetta*, 539 U.S. 126, 131 (2003), applied *Turner v. Safley* to reject an inmate's claim that Michigan prison regulations restricting or forbidding inmate "contact visits" violated his fundamental constitutional right to association. *See, e.g., Roberts v. United States Jaycees*, 468 U.S. 609, 618-20 (1984). The Court upheld the Michigan prison regulations, not on the basis of any heightened constitutional scrutiny, but because "the challenged regulations bear a rational relation to legitimate penological interests." *Overton*, 539 U.S. at 132. Rationality review, not heightened constitutional scrutiny, was appropriate because "[t]he very object of imprisonment is confinement," and "freedom of association is among the rights least compatible with incarceration." *Id.* at 131. *See also Johnson v. California*, 125 S. Ct. 1141, 1149 (2005) (noting that rational-relationship test has been applied to evaluation of asserted constitutional rights

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avoid transfer to more adverse conditions of confinement. *Meachum v. Fano*, 427 U.S. 215, 225 (1976).

"'inconsistent with proper incarceration'") (quoting *Overton*, 539 U.S. at 131).[4]

Free and unfettered access to, and participation in, "services, programs, or activities of a public entity" (42 U.S.C. § 12132) are likewise inconsistent with the nature of incarceration, even though prisons would otherwise fall within the language of Title II of the ADA. *Penn. Dep't of Corr. v. Yeskey*, 524 U.S. 206, 209 (1998) (reserving question presented by this case). This is made even clearer by the ADA rights that Goodman claims in this case, which include asserted broad rights to placement in the general population at a medical prison, "adequate" access to the law library, access to the chapel, access to a television, counseling services, educational services, phone calls, entertainment, and vocational training. (J.A. 65, 105) Each of those asserted rights would be subject to the *Turner v. Safley* rational-relationship inquiry. *See, e.g., Lewis v. Casey*, 518 U.S. 343, 351, 356 (1996) (holding that prisoners do not have a "abstract, freestanding right to a law library or legal

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[4] The United States nonetheless claims that "*Turner* review is more exacting than rational-basis review." (U.S. Br. 37) At best, this argument appears to be a semantic quibble. The *Turner* standard—"rationally related to legitimate penological interests"—obviously "echoes the rational-basis test" (*Kelo v. City of New London*, 125 S. Ct. 2655, 2669 (2005) (Kennedy, J., concurring)), which is frequently stated as "rationally related to a legitimate governmental purpose." *City of Cleburne*, 473 U.S. at 446. For another, the fact that *Turner*'s rational-relationship test resulted in "striking down marriage restrictions" imposed by a prison (U.S. Br. 37) demonstrates little, as the Equal Protection Clause's rational-basis test, too, has been used on occasion to strike down governmental enactments. *See, e.g., Allegheny Pittsburgh Coal Co. v. County Comm'n of Webster Cty.*, 488 U.S. 336 (1989). And, in all events, whatever minimal differences there might be between the *Turner* rational-relationship inquiry and the rational-basis test of the Equal Protection Clause, it would be unnecessary to resolve them in this case, as the more important point is that Title II of the ADA provides substantially greater legal protections to the rights of inmates with a disability than does the Constitution, even under *Turner*'s rational-relationship inquiry. *See* Section III, below.

assistance" and "leav[ing] it to prison officials to determine how best to ensure that inmates . . . have a reasonably adequate opportunity to file nonfrivolous legal claims challenging their . . . conditions of confinement"). Indeed, § 1983 prisoner suits seeking both monetary and injunctive relief for these types of claims have been roundly rejected by the courts.[5]

Decisions by state prison officials regarding whether to place an inmate within the general population or not are likewise subject only to rational-relationship review, with significant deference given to the prison officials' decisions. This is for good reason: Goodman says the State has discriminated against him under the ADA by *not* placing him in the general population. (J.A. 35) Yet the United States' Addendum B refers to at least three instances where prison administrators were cited for violating constitutional rights of inmates by placing disabled inmates in the general prison population.[6] *See also Cortes-Quinones v. Jiminez-Nettleship*,

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[5] *See, e.g., More v. Farrier*, 984 F.2d 269, 271 (8th Cir. 1992) (claimed right to television by disabled inmate: "[d]espite television's importance in modern society, appellees have no fundamental right to in-cell cable television, and wheelchair-bound inmates are not a suspect class"); *Elliott v. Brooks*, 188 F.3d 518 (10th Cir. 1999) (no constitutional right to watch television in prison) (table, text in Westlaw); *Baumann v. Ariz. Dep't of Corr.*, 754 F.2d 841, 846 (9th Cir. 1985) (no constitutional violation by prison's limitation of jobs and educational opportunities) (citing *Rhodes v. Chapman*, 452 U.S. 337, 348 (1981)); *Hoptowit v. Ray*, 682 F.2d 1237, 1254-55 (9th Cir. 1982) ("Idleness and the lack of [vocational, recreational, and educational] programs are not Eighth Amendment violations. The lack of these programs simply does not amount to the infliction of pain.") (citing *Rhodes v. Chapman, supra*); *Gibson v. Fed. Bureau of Prisons*, 121 Fed. Appx. 549, 551 (5th Cir. 2004) (inmate has no protected liberty interest in eligibility for a prison drug treatment program) (citing *Moody v. Daggett*, 429 U.S. 78, 88 n.9 (1976)).

[6] The Department of Justice found that Pennsylvania (not Massachusetts, as the United States' Addendum erroneously states) prison authorities violated the Constitution at Western State Correctional Institution because "[m]entally ill inmates who should be separated from the general

842 F.2d 556, 560 (1st Cir. 1988) (finding defendant liable under Eighth Amendment for being "deliberately indifferent" to mentally disabled inmate's health and safety by failing to segregate him from general population, which led to his beating death in the general population).

All that said, State prison inmates like Goodman are certainly not void of basic rights while incarcerated. Prison inmates possess some level of Due Process and Equal Protection rights, as well as an Eighth Amendment right to be free of cruel and unusual punishments. "[P]rison officials must ensure that inmates receive adequate food, clothing, shelter and medical care, and must take 'reasonable measures to guarantee the safety of the inmates.'" *Farmer v. Brennan*, 511 U.S. 825, 833 (1994) (quoting *Hudson v. Palmer*, 468 U.S. 517, 526-27 (1984)). "[D]eliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain . . ." proscribed by the Eighth Amendment. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). Indeed, Goodman's Eighth Amendment claims, which are directed to his cell's size and sanitation conditions, and to prison officials' alleged deliberate indifference to his serious medical needs, will continue regardless of how this Court answers the questions presented. If those allegations are ultimately proven, Petitioner Goodman would be entitled to relief under the Eighth Amendment. *Hope v. Pelzer*, 536 U.S. 730 (2002).

The United States nonetheless claims that "[w]hile many of th[e] constitutional claims [by prisoners] are invoked with appropriate deference to prison officials, that is not true of Eighth Amendment claims . . . ." (U.S. Br. 37 (citation

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population are not always separated." U.S. Addendum B, 2b. Hawaii (*id.*, 3b) and Guam (*id.*, 20b) were similarly chastised by the United States' Addendum for failing "to . . . segregate inmates with physical or mental impairments, which leads to failure to house such inmates safely. 'This failure results in vulnerable inmates being subject to predation in the general population.'" *Id.*

at 368-74; *Kimel*, 528 U.S. at 81-82; *City of Boerne*, 521 U.S. at 531. For Petitioners to succeed in showing that Congress meant to abrogate the States' historical immunity and allow claims by state prisoners for monetary damages against the State, they must demonstrate that Congress had a record before it that established such a pattern of state discrimination against disabled state prisoners with respect to the provision of public services, programs, and activities. This they cannot do.

A. The Proper Context For Evaluating The Abrogation Claim In This Case Is The Specific Prison Context, Not The General Area Of "State Services And Programs"

As Petitioners recognize, the issue before the Court—and the sole question presented—asks whether Title II was a valid exercise of Congress' § 5 authority *in the specific context* of state prison administration. (U.S. Br. 11-16; Goodman Br. 11-12.) Title II does not abrogate the States' sovereign immunity unless Congress determined, *when it passed the ADA*, that there existed a widespread pattern of discrimination with respect to the provision of public services, programs, and activities to the disabled *in state prisons*. *Compare, e.g., Lane*, 541 U.S. at 530-31 (noting "long history . . . [of] unequal treatment of disabled persons *in the administration of judicial services*" (emphasis added)) *with, e.g., Garrett*, 531 U.S. at 368 ("The legislative record of the ADA, however, simply fails to show that Congress did in fact identify a pattern of irrational state discrimination in employment against the disabled.").

Lane confirms this specific standard. In a series of footnotes, the Court outlined a "variety of settings" in which its own cases had previously identified unconstitutional treatment of the disabled by state agencies, including areas such as voting, marriage, and zoning. *Lane*, 541 U.S. at 524-25 nn. 5-14. Among these many and varied examples, the Court cited only three lower-court cases—two of which

could not have been before Congress when it passed Title II of the ADA, since they postdate its 1990 enactment by nearly a decade—where disabled inmates had claimed such violations. *Id.* at 525 n.11.[7]

But even having surveyed this broad range of examples, the Court declined "to consider Title II, with its wide variety of applications, as an undifferentiated whole." *Lane*, 541 U.S. at 530. Rather, the Court focused its analysis on "the class of cases implicating the accessibility of judicial services." *Id.* at 530-31 ("Whatever might be said about Title II's other applications, the question presented in this case is not whether Congress can validly subject the States to private suits for money damages for failing to provide reasonable access to hockey rinks, or even to voting booths, but whether Congress had the power under § 5 to enforce the constitutional right of access to the courts."). The Court's inclusion of "the penal system" as one of "a wide range of public services, programs, and activities" discussed in *Lane*, 541 U.S. at 524, says little to nothing regarding the question presented here. As we show below, it is clear that Congress did not find—nor could it have found—"widespread and persisting" discrimination on the basis of disability with respect to the provision of services, programs, or activities to state prisoners.

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[7] The Court cited three cases: *LaFaut v. Smith*, 834 F.2d 389 (4th Cir. 1987); *Schmidt v. Odell*, 64 F. Supp. 2d 1014 (D. Kan. 1999); and *Key v. Grayson*, 179 F.3d 996 (6th Cir. 1999). Each is objectively inapposite. *LaFaut*, an Eighth Amendment deliberate-indifference case, is the only one of the three decided before the ADA, and it involved a *federal* prison. 834 F.2d at 389-90. *Schmidt*, also an Eighth Amendment case, is similarly inapposite because it involved a county jail, not a state prison. 64 F. Supp. 2d at 1016. And *Key* was an ADA case that did not address the abrogation issue at all, but simply assumed that a deaf inmate's claim that the denial of an interpreter to attend sex-offender therapy sessions violated his ADA and Rehabilitation Act rights; moreover, the Sixth Circuit in that case held that prison officials were entitled to qualified immunity since the application of those acts to prisons and prisoners was not "clearly established" in 1996. 179 F.3d at 1002.

B. The Legislative Record Does Not Show That Congress Enacted The ADA On The Basis Of Fourteenth Amendment Violations In The State Prison Context

Petitioners' briefs themselves reveal the lack of support for their position in the Congressional history. Petitioners' heavy reliance on hearings that took place in the 1970s and early 1980s in connection with *other* legislation Congress enacted to address prisoners' needs (including a scattering of lower court decisions cited there), together with their virtual silence as to the legislative record of the ADA itself, speaks volumes. This near-total dependence on oblique and circumstantial "evidence" comes nowhere close to satisfying the requirements of this Court's decisions in this area.

The Legislative History of the ADA Itself. The legislative history of the ADA reflects that Congress' central concern was integrating "persons with disabilities *into the economic and social mainstream of American life.*" H.R. Rep. No. 101-485, Pt. 2, at 50, *reprinted in* 1990 U.S.C.C.A.N. 303, 332 (emphasis added). *See also id.*, Pt. 1, at 24, *reprinted in* 1990 U.S.C.C.A.N. 267, 268 (describing the purpose of the ADA as to "permit the United States to take a long-delayed but very necessary step to welcome individuals with disabilities fully into the mainstream of American society"); *id.*, Pt. 2, at 22, *reprinted in* 1990 U.S.C.C.A.N. at 304 ("The purpose of the ADA is to provide a clear and comprehensive national mandate to end discrimination against individuals with disabilities and to bring persons with disabilities into the economic and social mainstream of American life; . . . ."); *id.*, Pt. 3, at 1, *reprinted in* 1990 U.S.C.C.A.N. 445, 446 (same); *id.*, Pt. 4, at 2, *reprinted in* 1990 U.S.C.C.A.N. 512, 512 (same); S. Rep. No. 100-116 (1989) (same).

That concern, of course, is the polar opposite of a concern with the state prisoner, who is—as shown in Section I, above—by definition *removed from* society's mainstream.

Further, as *amici* State of Tennessee *et al.* explain in their brief, "inmates have long filed civil rights suits under 42 U.S.C. § 1983 to enforce the same constitutional rights that petitioners argue should now be enforced by a money damages remedy under the ADA." Tennessee *et al.* Amicus Br. 23. That fact provides even more reason to doubt that Congress identified a special Eighth Amendment problem, or that it intended to require a further federal remedy *only* available to prisoners with a disability.

All that said, even if every single one of the pre-ADA Eighth Amendment cases cited by Petitioners were included in the Court's consideration of the issue, that still would not demonstrate the existence of a "widespread and persisting" problem that mandated a federal money-damages remedy against the States. We turn now to that issue.

D. Petitioners' Collection Of Judicial Decisions Demonstrates No History Of "Widespread And Persisting Deprivation Of Constitutional Rights" Regarding Disabled State Prisoners

The heart of Petitioners' case lies in their efforts to demonstrate that a "massive body" (Goodman Br. 26) of decided cases demonstrates a wide and systematic deprivation of Fourteenth Amendment rights of which Congress must have been aware in passing Title II of the ADA. *Fla. Prepaid*, 527 U.S. at 642 ("[T]he legislative record still provides little support for the proposition that Congress sought to remedy a Fourteenth Amendment violation in enacting the Patent Remedy Act."); *Garrett*, 531 U.S. at 374 ("there must be a pattern of discrimination by the States which violates the Fourteenth Amendment"); *Hibbs*, 538 U.S. at 735 ("Congress must identify . . . not just the existence of age- or disability-based state decisions, but a 'widespread pattern' of irrational reliance on such criteria"); *see also Lane*, 541 U.S. at 541 (Rehnquist, C. J., dissenting). But those cases do not show anything close to a "widespread pattern" of unconstitutional discrimination against disabled

state prisoners: Most of Petitioners' cases postdate the enactment of the ADA—and thus could not possibly have contributed to Congress' deliberations that led to the enactment of Title II; few of those that predate the ADA involve *state* prisons; and fewer still involve alleged discrimination with respect to services, programs, or activities against a class of disabled inmates (as opposed to other, generalized allegations of constitutional violations that included some disabled state inmates within their sweep). That leaves Petitioners with but scattered, isolated instances of claimed discrimination against state prison inmates with respect to prison services, programs, or activities. Under this Court's decisions, these cases cannot sustain Petitioners' § 5 abrogation claim.

1. Two-Thirds Of Petitioners' "Massive Body" Of Cases Could Not Have Been Considered By Congress Because They Postdate The 1990 Enactment Of The ADA

Petitioners must show that Congress was considering a pattern of widespread discrimination *when it enacted the ADA* in 1990. *See Fla. Prepaid*, 527 U.S. at 640 (noting that "the propriety of any § 5 legislation 'must be judged with reference to the historical experience . . . it reflects'" and that Congress had not identified a pattern of unremedied patent infringement by the States when it enacted the Patent Remedy Act) (quoting *City of Boerne*, 521 U.S. at 525); *Kimel*, 528 U.S. at 90 (legislative record revealed that "Congress had virtually no reason to believe that state and local governments were unconstitutionally discriminating against their employees on the basis of age" and that, therefore, "Congress had no reason to believe that broad prophylactic legislation was necessary in this field."); *Garrett*, 531 U.S. at 368 (asking "whether Congress identified a history and pattern of unconstitutional employment discrimination by the States against the disabled," and finding that it had not). The vast majority of Petitioners' cited cases postdates the 1990 enactment of the

omitted)) But even that constitutional guarantee is addressed with due regard for the needs and realities of prison administration: "A prison official's duty under the Eighth Amendment is to ensure '"reasonable safety,"' a standard that incorporates due regard for prison officials' 'unenviable task of keeping dangerous men in safe custody under humane conditions.'" *Farmer*, 511 U.S. at 844-45 (quoting *Helling v. McKinney*, 509 U.S. 25, 33 (1993) and *Spain v. Procunier*, 600 F.2d 189, 193 (9th Cir. 1979) (Kennedy, J.) (citations omitted)). That is why the standard of liability under that amendment is the "more blameworthy" (*Farmer*, 511 U.S. at 835), "heightened" (*Corr. Servs. Co. v. Malesko*, 534 U.S. 61, 73 (2001)) standard of "deliberate indifference."

In sum: Claims directed to a disabled inmate's access to public services, programs, and activities would be subject to the most relaxed standard of constitutional review—the rational-basis test. Accordingly, Congress would have to have made the most substantial showing of a pattern of state constitutional violations in order to demonstrate that Title II is a proportional and congruent remedy, and thus "appropriate legislation" under § 5. *Cf. Hibbs*, 538 U.S. at 736. Congress did not make those findings, and it could not have made those findings, as no such record existed.

II. IN ENACTING TITLE II OF THE ADA, CONGRESS DID NOT IDENTIFY A HISTORY AND PATTERN OF UNCONSTITUTIONAL DISCRIMINATION BY THE STATES AGAINST DISABLED STATE PRISON INMATES

"Congress' § 5 authority is appropriately exercised only in response to state transgressions." *Garrett*, 531 U.S. at 368. Thus, Congress cannot pass legislation that abrogates the States' Eleventh Amendment sovereign immunity without identifying a "widespread and persisting" pattern of unconstitutional discrimination requiring a federal remedy. *Fla. Prepaid*, 527 U.S. at 645-46; *see also Garrett*, 531 U.S.

See generally Palmer, 468 U.S. at 526 ("Prisons, by definition, are places of involuntary confinement of persons who have a demonstrated proclivity for antisocial criminal, and often violent, conduct. Inmates have necessarily shown a lapse in ability to control and conform their behavior to the legitimate standards of society . . . ."). Thus, the statements of legislative intent found in the printed history of the ADA demonstrate, if anything, a Congressional concern with disabled persons in the "mainstream" of American society, and not those who have been removed from that mainstream society and incarcerated—just as the ADA legislative history considered in *Garrett* demonstrated a Congress concerned with "'employment in the private sector,'" and not state employment. 531 U.S. at 371-72 (quoting H.R. Rep. No. 101-485, pt. 2, p. 28, *reprinted in* 1990 U.S.C.C.A.N. at 310) (emphasis removed).

In perhaps the most telling instance of Petitioners' scarce support, the United States' brief avers: "Congress further heard that 'jailers rational[ize] taking away [inmates'] wheelchairs as a form of punishment as if that is different than punishing prisoners by breaking their legs.'" (U.S. Br. 23). The cited testimony had nothing to do with prisons. Instead, this quotation came from the testimony of Cindy Miller, a disabled woman from Boston employed as a "rehabilitation counselor." *See ADA: Joint Hearing on S. 2345*, 100th Cong. 1190 (statement of Cindy Miller). Ms. Miller's congressional testimony was styled as "a day in my diary of discrimination," and she began that "diary" by pointing out that to obtain the necessary assistance in getting in and out of bed, she lived—against her choice—with a roommate to whom she offered free rent, because the "personal care assistant rates of pay" were insufficient to attract qualified persons to work as overnight attendants. *Id.* She then spoke of her own fear of being "institutionalized"—not in a state prison, but in an institution for the disabled. Her references to "jailers" and "inmates" were harsh metaphors for disability-institution employees and patients:

> *I live in constant fear that* the economics argument subsidizing personal care assistants programs will be lost and *I will be institutionalized.* Because independent living is not a right to freedom for Americans with disabilities, this is a realistic fear. But it will not be my choice.
>
> *As a rehabilitation counselor, I have seen these institutions.* The smell of human waste and detergent has stuck in my throat. I have looked into the vegetative eyes of its inmates and the sterile environments. I have heard of the premature death rates and prevalence of pneumonia, literally allowing them to rot in their beds.
>
> *I have witnessed their jailers rational* [sic] *taking away their wheelchairs as a form of punishment as if that is different than punishing prisoners by breaking their legs. I have witnessed their jailers taking away their food as a form of punishment, as if that is different than starvation. I have witnessed their jailers talk about them in their third person and leave them naked to the public as if that does not strip them of their human dignity.*

Id. (emphasis added).

Indeed, a computer-database search of the legislative history of the ADA reveals several uses of this "prison" metaphor, but only one reference to conditions *in* prisons. That single reference is decidedly unhelpful to Petitioners.[8]

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[8] A search of the "ADA-LH" (Americans With Disabilities Act Legislative History) database on the Westlaw service, for documents containing *any* of the terms "prison!," "imprison!," "eighth amendment," or "cruel and unusual punishment!," returned only 17 references (none to "eighth amendment" or "cruel and unusual punishment"). Almost half of the 17 (eight) utilized the "imprisonment" metaphor to describe the challenges faced by persons with disabilities. *See, e.g., ADA: Joint Hearing on H.R. 2273,* at 49 (statement of Joseph L. Rauh, Jr.) ("The literal imprisonment of millions of disabled people because of an inaccessible transit system is a national disgrace."). Four more were references to reports explaining that the definition of "disability" did not extend to "having a prison record." *E.g.,* S. Rep. No. 101-116, at 22; H. Rep. No. 101-485, pt. 2, at 52, *reprinted in* 1990 U.S.C.C.A.N. at 334;

Other Congressional Hearings and Reports. Petitioners cite liberally to research and hearings placed before Congress with respect to the Rehabilitation Act of 1973 (Pub. L. No. 93-112, 87 Stat. 394) and the Civil Rights of Institutionalized Persons Act of 1980 ("CRIPA") (Pub. L. No. 96-247, 94 Stat. 349). (U.S. Br. 24-27; Goodman Br. 21, 23-25.) Both of these enactments took place over a decade prior to the passage of the ADA.

Particularly with respect to the CRIPA—the Civil Rights of *Institutionalized Persons* Act—it is hardly surprising that Congressional hearings, task forces, and reports addressed certain challenges faced by disabled prisoners (part of the class of "institutionalized persons" covered by the Act). Even so, the findings that led to both CRIPA and the Rehabilitation Act hardly support Petitioners' abrogation claim here. If anything, the more logical inference would be that Congress thought it had already sufficiently addressed any problem that might have existed with respect to the provision of state services, programs, and activities to incarcerated state prisoners.

Petitioners place additional reliance on a 1983 report of the United States Commission on Civil Rights. (*See* U.S. Br. 20 n.13; Goodman Br. 25 (each citing U.S. Civil Rights Commission, *Accommodating the Spectrum of Individual Abilities* (1983) (the "1983 Report")). This report, of course, was not in any way specific to state prison services and programs, but more generally addressed all areas in which

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id., pt. 3, at 28, *reprinted in* 1990 U.S.C.C.A.N. at 451. The only reference to actual prison conditions among these 17 was Senator Helms' stated concern, in floor debates, that the ADA would require restaurants to allow HIV-positive workers to be food handlers; Senator Helms noted that the *federal* Bureau of Prisons had prohibited HIV-positive inmates from engaging in any aspect of prison food service operations, and that passage of the ADA would "let prisoners get along without having HIV positive people preparing food," but restaurants serving the public could not follow the same practice. 136 Cong. Rec. S9527-02, S9535-36 (daily ed. July 11, 1990).

the Commission determined disabled Americans faced issues at that time. Appendix A to that report demonstrates this: It listed the "Criminal Justice System" (an area that itself included, but was scarcely limited to, state prisons) as one of those 22 areas, which also included limits on participation in the military, as well as restrictions on insurance. 1983 Report, Appendix A. Even putting aside the fact that the 1983 Report came seven years prior to the ADA's enactment, it hardly constitutes a sufficient—let alone sufficiently specific—record on which to base § 5 authority for Petitioners' claims.[9]

Petitioners similarly misplace reliance on the accounts contained in the 1990 report entitled "Task Force on the Rights and Empowerment of Americans with Disabilities, *From ADA to Empowerment*" (the "Task Force Report"). (U.S. Br. 20 n.12; Goodman Br. 25) In *Garrett*, the Court dismissed the dissenting opinion's reliance on this very report, noting that it did not consist of legislative findings, but of "unexamined, anecdotal accounts of 'adverse, disparate treatment by state officials,'" which "were submitted not directly to Congress but to the Task Force on the Rights and Empowerment of Americans with Disabilities, which made no findings on the subject of state discrimination in employment." 531 U.S. at 370-71. The same can be said of the absence of findings on the subject of state discrimination on the basis of disability in providing services to incarcerated prisoners.

The United States calls attention to several other studies evaluating the prevalence of mistreatment of disabled prisoners. (U.S. Br. 22-23) There is, however, no evidence

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[9] Goodman also notes that this Court cited the 1983 Report in *Lane*. (Goodman Br. 25 (citing *Lane*, 541 U.S. at 527)) This does nothing to help his cause, as *Lane* cited this report for the proposition that disabled members of free society, not convicted prisoners, were being excluded from "the particular services at issue in this case"—access to the courts. 541 U.S. at 527.

that Congress considered these studies—especially the one that postdates the ADA by more than a decade (*id.* at 22 & n.16)—when it enacted the ADA. And even if one could reasonably draw an inference that Congress had considered such studies, Congress's failure—in the face of those studies—to mention state prisons specifically in the findings undergirding Title II of the ADA suggests a Congressional judgment that no pervasive pattern of unconstitutional discrimination with respect to the provision of services and programs to disabled state prisoners had been documented or detected. *See, e.g., Garrett,* 531 U.S. at 371-72.

In short, the assortment of studies sprinkled through Petitioners' briefs "fall[s] far short of even suggesting the pattern of unconstitutional discrimination on which § 5 legislation must be based." *Garrett,* 531 U.S. at 370 (citing cases).

C. Petitioners' Reliance On Eighth Amendment Decisions To Support Their Abrogation Claims Is Without Merit

Both Petitioners urge that money damages under Title II of the ADA should be viewed, *inter alia,* as an appropriate remedy for a history of Eighth Amendment violations inflicted by prisons upon disabled prisoners, in view of that Amendment's applicability to the States through the Fourteenth Amendment's Due Process Clause. (Goodman Br. 14-16; U.S. Br. 21) This contention is meritless.

There is no basis for viewing Title II of the ADA, an anti-discrimination command, as any kind of remedy for Eighth Amendment violations. The "by reason of . . . disability" language of Title II of the ADA plainly indicates that it is an anti-discrimination statute for persons with disabilities, requiring that the discrimination take place "because of" the person's disability. *Olmstead v. L.C. ex rel. Zimring,* 527 U.S. 581, 597-98 & n.10 (1999); *see* 42 U.S.C. § 12132 (prohibiting exclusion of "qualified individual with a disability" from or denial of services, programs, or activities

"by reason of such disability"); *see generally Smith v. City of Jackson*, 125 S. Ct. 1536, 1549-50 (2005) (O'Connor, J., concurring). Yet the Eighth Amendment's Cruel and Unusual Punishments Clause is not primarily an anti-discrimination command, nor is it aimed just at the class of prisoners with a disability.

While it is conceivable that a prison could discriminate against disabled state prisoners by inflicting cruel and unusual punishments upon them "by reason of" their disability, there is quite obviously no pre-ADA record of such discrimination—and certainly none so "widespread and persisting," *Florida Prepaid*, 527 U.S. at 645-46—to even remotely support such a claim. The most that could possibly be said of Petitioners' collection of judicial decisions is that a few of them involve Eighth Amendment claims where the class of prisoners subjected to Eighth Amendment violations *included* some prisoners with an arguable "disability." But that would not demonstrate (nor would it even suggest) that these pre-ADA Eighth Amendment violations came about "by reason of" those prisoners' disabilities. *See* Section II(D), below.

Moreover, it is difficult to imagine that Congress intended to use Title II of the ADA to enlarge state prisoners' rights to sue state governments for money damages in Eighth Amendment cases. Like so many of the modern Congresses, the Congress that enacted the ADA was also concerned with the overflow of prisoner suits that was clogging the administration of justice in the federal district courts, and which, in 1995, comprised over one-quarter of the federal district courts' dockets. *See* 141 Cong. Rec. S7256 (daily ed. May 25, 1995) (statement of Sen. Kyl). This concern, which continues today, was recognized only three Congresses later in the Prison Litigation Reform Act of 1995, P.L. 104-134, tit. VII, 42 U.S.C. § 1997e, which circumscribed the ability of state prisoners to initiate and maintain federal litigation.

ADA, and therefore cannot constitute evidence of Congress' review as a matter of objective fact.

Between them, Petitioners cite about 150 cases as "evidence" of data they claim Congress considered when it enacted the ADA in 1990. (U.S. Br. at Addendum A; Goodman Br. at 28-36 nn. 14-26) But, as shown in the Addendum to this brief, nearly two-thirds of those cited cases date *after* 1990. Only 54 of these cases pre-date the ADA. *See* Resps' Addendum, Table VII. In fact, these 54 decisions hail from only 35 States (plus the District of Columbia and Puerto Rico); 15 States are not even represented. Even if Congress had considered *all* of these pre-1990 cases—and there is no evidence that it did—their paucity alone may be the single greatest impediment to Petitioners' efforts to demonstrate abrogation. *Compare Garrett*, 531 U.S. at 370 ("Congress, in enacting the ADA, found that 'some 43,000,000 Americans have one or more physical or mental disabilities.' In 1990, the States alone employed more than 4.5 million people. It is telling, we think, that given these large numbers, Congress assembled only such minimal evidence of unconstitutional state discrimination in employment against the disabled.") (quoting 42 U.S.C. § 12101) (citation omitted).

Even so, those 54 pre-ADA decisions suffer from additional problems that render even that fraction of Petitioners' cases not probative of Congressional authority to abrogate States' sovereign immunity in this precise area.

2. Most Of Petitioners' Pre-ADA Cases Are Facially Inapposite

As shown in the Addendum to this brief, the vast majority of Petitioners' 54 pre-ADA cases did not even involve claims of discrimination against disabled state prisoners under the Fourteenth Amendment. *See* Resps' Addendum, Table VII. To the contrary, most of Petitioners' pre-1990 cases finding *any* kind of constitutional violation involve complaints regarding general deficiencies in medical care,

psychiatric treatment or other prison conditions *as applied to all inmates*, not just disabled inmates. *See* Resps' Addendum, Tables I, III. These cases objectively fail to establish Congressional concern with the type of *intentional* discrimination against disabled state prison inmates (or even the "deliberate indifference" of the Eighth Amendment) that would be required to justify Title II of the ADA as appropriate § 5 legislation as applied to the class of cases implicating the prison context. *Garrett*, 531 U.S. at 375 (Kennedy, J, concurring) (noting that "the failure to act or the omission to remedy" is not typically "the purposeful and intentional action required to make out a violation of the Equal Protection Clause"); *Hibbs*, 538 U.S. at 751 (Kennedy, J., dissenting) (similar); *cf. Fla. Prepaid*, 527 U.S. at 645 (noting that "the evidence before Congress suggested that most state [patent] infringement was innocent or at worst negligent").

At the most general level, Petitioners' selection of cases is premised on several unwarranted assumptions. Included among them are the assumption that all prisoners who need medical or psychiatric care are "disabled" within the meaning of the ADA, as well as the assumption that failing to provide adequate medical or psychiatric treatment to a prisoner in need of such treatment amounts to unconstitutional discrimination even where other inmates had no access to better care. A significant number of these cases also highlight problems that Title II of the ADA would not address. Conversely, other cases describe circumstances in which a disabled inmate with ADA rights would have relief that a non-disabled inmate facing exactly the same unfavorable condition (*e.g.*, lack of medical care) would not have. Specifically, Petitioners' pre-1990 cases are inapposite to establish Congress' authority in the following ways:

Prison Conditions Applicable To All Inmates. Twenty of Petitioners' 54 pre-ADA cases challenged—often through class actions—conditions of the entire prison facility, and thus applied *equally* to non-disabled inmates as well as

that the defendant's state of mind was that of "deliberate indifference" to the prisoner's "serious medical needs." *See, e.g., Wilson v. Seiter*, 501 U.S. 294, 298 (1991) (quoting *Rhodes v. Chapman*, 452 U.S. 337, 342 (1981) and *Estelle*, 429 U.S. at 106)). Yet allowing a disabled prisoner to enforce the Cruel and Unusual Punishments Clause through Title II of the ADA would lighten his burden of proof, from a "deliberate indifference"-to-serious-medical-needs standard to a simple denial-of-services standard. *See* 42 U.S.C. § 12132 ("[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services . . . of a public entity."). What is more, *only* prisoners with a "disability" within the meaning of the statute could enforce the Cruel and Unusual Punishments Clause and obtain money damages via the ADA; non-disabled prisoners suffering cruel and unusual punishment could not. This substantial expansion of constitutional rights, and the simultaneous underinclusive-ness of the class of individuals who could obtain the statute's remedies, demonstrates the statute's lack of proportion and congruence.

Third, for essentially the same reasons set forth in Section II, above, and illuminated by the Appendix to this brief, there was no evidence of "widespread and unconstitutional" cruel and unusual punishments of disabled state prisoners meriting a further federal remedy.

In sum, whether Title II of the ADA is evaluated with reference to "the prison context" generally, or as a statute seeking to remediate cruel and unusual punishments, that law lacks the proportionality and congruity demanded by this Court's decisions.

CONCLUSION

For these reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

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disabled ones. *See* Resps' Addendum, Table I. For example, *Balla v. Idaho State Board of Corrections*, 595 F. Supp. 1558, 1561 (D. Idaho 1984), and *Battle v. Anderson*, 376 F. Supp. 402, 415 (E.D. Okla. 1974), *aff'd in part, rev'd in part*, 993 F.2d 1551 (10th Cir. 1993), challenged certain prison conditions as they applied to the entire population. The plaintiffs in *Balla* alleged deficiencies in, *inter alia*, the prisoners' nutrition, clothing, and medical care. In ordering relief, the court mentioned that three inmates had special dietary requirements as a result of their specific medical conditions, and ordered those needs to be met. 595 F. Supp. at 1575, 1583. In *Battle*, the plaintiffs alleged that their prison administrators mistreated the inmates through acts such as racial segregation, prohibitions on religious congregation, punishment with chemical agents, refusal to provide meals that adhered to religious beliefs, and restrictions on reading materials, and they complained that their medical care, including psychiatric care, was inadequate. 376 F. Supp. at 415. Noting that medical and psychiatric care was deficient and posed a threat to the health and well-being of the "inmate population," the court ordered improvements. *Id.* at 416, 434. Neither court found that any prisoner suffered discrimination or any kind of Fourteenth Amendment violation as a result of a disability, nor did either court even mention any such allegation. In addition to *Balla* and *Battle*, 18 more of Petitioners' pre-ADA cases involve facts inapposite for the same reasons. *See* Resps' Addendum, Table I.

Facility-Wide Deficiencies In Medical Or Psychiatric Care. Nineteen of Petitioners' pre-ADA cases involved claims regarding inadequate medical or psychiatric care for the entire facility. *See* Resps' Addendum, Table III. Even under the unwarranted assumption that all inmates who need such treatment are perforce "disabled," it would not follow that such an omission would be unconstitutional discrimination prohibited by the Fourteenth Amendment. *See Garrett*, 531 U.S. at 375 (Kennedy, J., concurring);

Hibbs, 538 U.S. at 751 (Kennedy, J., dissenting); *Fla. Prepaid*, 527 U.S. at 645. Many of these cases would at most demonstrate an adverse, but not deliberate, impact on disabled persons. *See City of Boerne*, 521 U.S. at 530-31 ("In contrast to the record which confronted Congress and the Judiciary in the voting rights cases, RFRA's legislative record lacks examples of modern instances of generally applicable laws passed *because of* religious bigotry . . . It is difficult to maintain that [these laws of general applicability] are examples of legislation enacted or enforced *due to animus or hostility to the burdened religious practices* or that they indicate some widespread pattern of religious discrimination in this country." (citations omitted; emphasis added)).

No Ruling On The Merits. Fourteen of Petitioners' pre-ADA cases did not even decide the merits of Plaintiffs' Constitutional claims. *See* Resps' Addendum, Table II. For example, 6 of Petitioners' pre-ADA cases are preliminary-injunction rulings, which by definition precede any determination of the merits of the constitutional claims. *Id.* In *Duran v. Anaya*, 642 F. Supp. 510 (D.N.M. 1986), the court's preliminary injunction prohibited scheduled staffing reductions that, if permitted, would render the facility "unable to meet their constitutional obligation to provide . . . medical care, dental care and psychiatric care"—therefore *preventing* any constitutional violation from occurring. *Id.* at 525. Similarly, in *Eng v. Smith*, 849 F.2d 80 (2d Cir. 1988), the court found no abuse of discretion in the trial court's grant of preliminary injunctive relief in connection with class-action claims of systemic deficiencies in the state prison's mental-health-care system, but specifically noted that "we do not decide at this stage whether defendants' actions actually met the 'deliberate indifference' standard . . . ." *Id.* at 82. Likewise, 8 other cases involved reversals or denials of summary-judgment motions, or were remanded for further proceedings for other reasons. *See* Resps'

Addendum, Table II. These cases obviously are not particularly probative of actual constitutional violations.

Non-State Prison Facilities. Sixteen of Petitioners' pre-ADA cases involved non-state facilities such as county jails. *See* Resps' Addendum, Table V. Two of these cases actually involved *federal* prisons, which obviously cannot establish a pattern of intentional discrimination by the *States*. As this Court held in *Garrett*, "units of local government . . . are subject to private claims for damages under the ADA without Congress' ever having to rely on § 5 of the Fourteenth Amendment to render them so. It would make no sense to consider constitutional violations on their part, as well as by the States themselves, when only the States are the beneficiaries of the Eleventh Amendment." *Garrett*, 531 U.S. at 369 (citations omitted). *See also Lane*, 541 U.S. at 542 (Rehnquist, C. J., dissenting) ("Even if it were proper to consider this broader category of evidence, much of it does not concern *unconstitutional* action by the *States*. The bulk of the Court's evidence concerns discrimination by non-state governments, rather than the States themselves. We have repeatedly held that such evidence is irrelevant to the inquiry whether Congress has validly abrogated Eleventh Amendment immunity, a privilege enjoyed only by the sovereign States." (footnote omitted; emphasis in original)). Even though local jailing authorities may, under *some* states' law, be regarded as "arms of the state" for Eleventh Amendment immunity purposes (*cf.* Goodman Br. 21-22 n.7, citing *Manders v. Lee*, 338 F.3d 1304 (11th Cir. 2003) (en banc)), the fact remains that in 1990, when Congress enacted Title II of the ADA, "most courts and litigants assumed that county sheriffs . . . were indeed county officials for purposes of § 1983 litigation," and that only this Court's 1997 decision in *McMillian v. Monroe County*, 520 U.S. 781 (1997), spurred "a wave of litigation in which sheriffs have contested their status as local officials." Karen M. Blum, *Support Your Local Sheriff: Suing Sheriffs Under § 1983*, 34 STETSON L. REV. 623, 625-26 (2005).

Cases Where Non-Disabled Prisoners Claim The Same Problems Alleged By Petitioner Goodman. Twelve of Petitioners' pre-ADA cases involve circumstances where *non-disabled* inmates were subjected to conditions like those Goodman challenges, such as extremely constrained physical space, lack of cleaning products or assistance, insufficient toilet facilities, and exposure to human waste. *See* Resps' Addendum, Table IV. Aside from the paucity of these cases, this demonstrates—as shown in Section III—that a congressional response of granting a remedy only to *disabled* prisoners lacks both congruence and proportionality.

3. The Few Judicial Decisions Remaining Are Too Isolated And Sporadic To Demonstrate A "Widespread And Persisting" Pattern Of Unconstitutional Treatment Of Disabled State Prisoners

What is left of Petitioners' pre-ADA cases is few in number—11—and probative of little with any relevance to this case. *See* Resps' Addendum, Table VI. Even if one could reasonably reach the conclusion that these 11 cases had been specifically considered by Congress, this is far from sufficient to demonstrate a "widespread and persisting" problem in need of a federal remedy. *Fla. Prepaid*, 527 U.S. at 645-46.

It would be inappropriate to sustain Petitioners' abrogation claim based on this *post hoc* assemblage of a few judicial decisions, particularly when there is no evidence that Congress ever actually considered them. *Id.* at 647 ("The examples of States avoiding liability for patent infringement by pleading sovereign immunity in a federal-court patent action are scarce enough, but any plausible argument that such action on the part of the State deprived patentees of property and left them without a remedy under state law is scarcer still."). *See also Garrett*, 531 U.S. at 369-70 ("Respondents in their brief cite half a dozen examples from the record that did involve States . . . Several of these

incidents undoubtedly evidence an unwillingness on the part of state officials to make the sort of accommodations for the disabled required by the ADA . . . But even if it were to be determined that each incident upon fuller examination showed unconstitutional action on the part of the State, these incidents taken together fall far short of even suggesting the pattern of unconstitutional discrimination upon which § 5 legislation must be based."); *id.* at 371 n. 7 ("Only a small fraction of the anecdotes Justice BREYER identifies in his Appendix C relate to state discrimination against the disabled in employment. At most, somewhere around 50 of these allegations describe conduct that could conceivably amount to constitutional violations by the States, and most of them are so general and brief that no firm conclusion can be drawn."); *id.* at 375-76 (Kennedy, J., concurring) ("If the States had been transgressing the Fourteenth Amendment by their mistreatment or lack of concern for those with impairments, one would have expected to find in decisions of the courts of the States and also the courts of the United States extensive litigation and discussion of the Constitutional violations. This confirming judicial documentation does not exist. That there is a new awareness, a new consciousness, a new commitment to better treatment of those disadvantaged by mental or physical impairments does not establish that an absence of state statutory correctives was a constitutional violation.").[10]

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[10] *See also Hibbs*, 538 U.S. at 754-55 (Kennedy, J., dissenting) ("The paucity of evidence to support the case the Court tries to make demonstrates that Congress was not responding with a congruent and proportional remedy to a perceived course of unconstitutional conduct. Instead, it enacted as substantive entitlement program of its own. If Congress had been concerned about different treatment of men and women with respect to family leave, a congruent remedy would have sought to ensure the benefits of any leave program enacted by a State are available to men and women on an equal basis."); *Lane*, 541 U.S. at 547-48 (Rehnquist, C. J., dissenting) ("The barren record here should likewise be fatal to the majority's holding that Title II is valid legislation enforcing due process rights that involve access to the courts. This

In sum, Petitioners' collection of largely inapposite cases fails to demonstrate the existence of—let alone Congressional consideration of—a serious, widespread, and pervasive problem involving disabled state prison inmates and their access to state programs, services, or activities, and certainly none meriting the federal remedy prescribed by Title II of the ADA.

III. TITLE II OF THE ADA IS NOT A PROPORTIONATE OR CONGRUENT REMEDY UNDER SECTION 5

Even if the condition of relevant State misconduct could somehow be established in this case—and Section II, above, demonstrates that it cannot—Title II of the ADA independently fails the requirement that "the remedy imposed by Congress must be congruent and proportional to the targeted violation." *Garrett*, 531 U.S. at 374. *See also Civil Rights Cases*, 109 U.S. 3, 13 (1883) (Section 5 requires that the legislation be "adapted to the mischief and wrong which the [Fourteenth] [A]mendment was intended to provide against"). The congruence-and-proportionality requirement ensures proper respect for "the line between measures that remedy or prevent unconstitutional actions and measures that make a substantive change in the governing law." *City of Boerne*, 521 U.S. at 519. As applied to the class of cases involving disabled state prisoners' access to programs, services, and activities, Title II is "so out of proportion to a supposed remedial or preventive object that it cannot be understood as responsive to, or designed to prevent, unconstitutional behavior." *Id.* at 532.

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conclusion gains even more support when Title II's nonexistent record of constitutional violations is compared with legislation that we have sustained as valid § 5 enforcement legislation. . . . Accordingly, Title II can only be understood as a congressional attempt to 'rewrite the Fourteenth Amendment law laid down by this court,' rather than a legitimate effort to remedy or prevent state violations of that amendment." (citations omitted)).

Title II of the ADA, as applied to state prisons, bears no markings of the sort of calibrated remedial legislation that could satisfy the § 5 requirement of "enforce[ment] by appropriate legislation." To begin, Title II contains not a word suggesting that any of its remedial provisions were directed specifically to the context of state prisons. Quite the contrary: Title II contains two parts—Part A, which is entitled "Prohibition Against Discrimination and Other *Generally Applicable Provisions*" (42 U.S.C. §§ 12131-12134) (emphasis added), and Part B, entitled "Actions Applicable to Public Transportation Provided by Public Entities Considered Discriminatory" (42 U.S.C. §§ 12141-12165). Viewed in that light, it is difficult to understand Part A's generalized remedial provisions "as responsive to, or designed to prevent unconstitutional behavior" as applied to state prisons and prisoners. *Garrett*, 521 U.S. at 532. Its "indiscriminate scope" confirms that it is anything but a proportionate response to a constitutional problem in state prisons. *Kimel*, 528 U.S. at 91.

Indeed, it is quite clear that in the ADA generally, and in Title II in particular, Congress was in fact changing the law to provide disabled persons with substantially greater legal rights and remedies than the Constitution afforded them: In the ADA's statement of findings and purpose, Congress declared that "individuals with disabilities are a discrete and insular minority . . . relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and . . . not truly indicative of the individual ability of such individuals to participate in, and contribute to, society." 42 U.S.C. § 12101(a)(7). Congress's use of the "discrete and insular minority" terminology, of course, is a direct quotation of the Court's famous footnote 4 in *United States v. Carolene Products Co.*, 304 U.S. 144, 152-53 n.4 (1938), which made the case for "heightened scrutiny" of classifications burdening such "discrete and insular" groups; and Congress's further reference to "characteristics that are

. . . not truly indicative of the individual ability of such individuals to participate in, and contribute to, society" echoes the Court's rationale for viewing classification of "quasi-suspect" classes with similarly searching scrutiny. *Mathews v. Lucas*, 427 U.S. 495, 505 (1976) (illegitimacy has "no relation to the individual's ability to participate in and contribute to society").

Congress's intent to treat the disabled as at least a quasi-suspect class with respect to access to programs and services is clear. But that goes far beyond the Constitution's requirements, which treat the disabled as a non-suspect class entitled only to rational-basis constitutional scrutiny, and which further view prison officials' actions and classifications with significant deference. *City of Cleburne, supra*; *Turner, supra*. And it goes far beyond any such rights accorded by the Eighth Amendment, which, it bears repeating, requires "deliberate" indifference, not merely a denial of access.

A carefully calibrated remedy applicable to the constitutional claims of disabled state prisoners would have to take into account the significant deference to prison administration, and would further have to recognize the significant differences in the substance and scope of constitutional rights possessed by state prisoners—but there is not a hint of that anywhere in the statute. The ADA is thus policy-based social-advancement legislation that seeks to give the disabled substantially greater rights of access to public services, programs, and activities than any provision of the Constitution would. That is perfectly appropriate for Congress to do when it makes a generally applicable law, and it is indeed laudatory, but more is required before such laws of general application can be applied to permit access to a sovereign state's treasury. The careful calibration of remedy to wrong that would be required to allow state prisoners to bring Title II suits for money damages is just not present here.

The United States nonetheless claims that Title II's requirements of nondiscriminatory access, reasonable accommodations, and reasonable modifications are all "sensitive to the unique security needs in prisons and tailored to the constitutional problems it remedies." (U.S. Br. 42) That is not so. As we have shown, there is no evidence whatsoever that Congress in passing the ADA was intending to be "sensitive" to the States' substantial interest in prison administration, or that Title II was somehow specially "tailored" to prisons. Rather, Congress addressed most of Title II through "[g]enerally [a]pplicable [p]rovisions." Unsurprisingly, there is not a single provision in Title II that even attempts to take into account the "unique circumstance of incarceration," *McNeil v. United States*, 508 U.S. 106, 113 (1993), or "the peculiar and restrictive circumstances of penal confinement." *Jones v. N.C. Prisoners' Union*, 433 U.S. at 125.

Apparently recognizing the serious risk that Title II's provisions will not survive the Court's prescribed congruence-and-proportionality analysis, Petitioner Goodman offers an alternative, fallback argument. Goodman claims that Title II is validly applied to allow money damages against states at least "as applied to cases where the state actually violated a plaintiff's constitutional rights" (Goodman Br. 45), such that it should at a minimum be sustained as an appropriate statutory remedy for Goodman's constitutional claims under the Cruel and Unusual Punishments Clause.

There are several problems with this fallback argument. *First*, it is not "fairly included" within the question presented by Goodman, which asks whether Congress validly abrogated state sovereign immunity "for suits by inmates with disabilities *challenging discrimination by* state-operated prisons." Goodman Br. i (emphasis added); *see* S. Ct. R. 14.1(a) ("Only the questions set out in the petition, or fairly included therein, will be considered by the Court."). Goodman's claim of "deliberate indifference" to injury or

illness is not a disability-based "discrimination" claim, but a claim that sounds in individualized treatment. *See, e.g., Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976).

Second, Goodman's proposed approach is inconsistent with the approach taken by this Court in *Lane*, where abrogation was sustained "as it applies to the class of cases implicating the accessibility of judicial services." 541 U.S. at 531. While that is undoubtedly why Petitioners have framed the issue in this Court as one dealing with the application of Title II "in the prison context" (*see, e.g.*, Goodman Br. 14; *see also id.* at 12 ("in the class of cases implicating the accessibility of prisons and discrimination against inmates with disabilities"); U.S. Br. 9), Goodman's attempt to redefine the analysis as one appropriately done not just on a "class of cases," but on a case-by-case basis, is inconsistent with *Lane*, and inconsistent with the way in which Congress legislates, which is decidedly not on a "case-by-case" basis.

Goodman nonetheless claims (Goodman Br. 47) that his alternative case-by-case approach is supported by *United States v. Raines*, 362 U.S. 17 (1960), and *Griffin v. Breckenridge*, 403 U.S. 88 (1966). It is not. In *Raines*, the defendants were state actors who claimed that the Civil Rights Act of 1957, 42 U.S.C. § 1971, could not constitutionally be applied to them because subsection (c) of that statute reached beyond the Constitution and applied to "any person" who engaged (or was reasonably thought about to engage) in acts which would deprive any person of one of the rights guaranteed by subsection (a) of that act, and not just state actors. 362 U.S. at 19-20. The Court held that the state-actor defendants could not facially attack § 1971 on the ground that applying it to non-state-actor defendants exceeded the congressional power under § 2 of the Fifteenth Amendment (which contains the same "appropriate legislation" language as § 5 of the Fourteenth Amendment). *Id.* at 24-25. That holding was an unexceptional application of the rule that "facial" challenges to statutes are almost

never appropriate. *See Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 501-02 (1985) (explaining the holding of *Raines* in this fashion); *United States v. Booker*, 125 S. Ct. 738, 774 n.1 (2005) (Stevens, J., dissenting in part) (similar). Here, by contrast, there is no place for application of the principle that "a litigant may only assert his own constitutional rights or immunities," *Raines*, 362 U.S. at 22, as it is the State of Georgia, the Georgia State Prison, and the prison's officials and employees who are invoking the constitutional objection in this case.[11]

To the extent that *Raines* is at all instructive in this case, it only serves to demonstrate why Title II of the ADA is not a congruent or proportional congressional response to claims of cruel and unusual punishment. In *Raines*, subsection (a) of the challenged statute guaranteed the right to vote "without distinction of race, color, or previous condition of servitude." That is precisely the guarantee of § 1 of the Fifteenth Amendment ("The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."), so the rights protected by subsection (a) of the statute were perfectly congruent with the constitutional right.

But applying the ADA to enforce the Eighth Amendment's Cruel and Unusual Punishments Clause would be wildly incongruent and disproportionate to even that constitutional right. This Court's precedents require a prisoner claiming cruel and unusual punishment to prove an objective component—that the defendant's conduct objectively rises to the level of a constitutional violation by depriving the prisoner of the "minimal civilized measure of life's necessities"—and a subjective component, establishing

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[11] *Griffin v. Breckenridge*, 403 U.S. 88 (1971) is to the same effect. *Griffin* cited *Raines* as an example of a case that had "firmly rejected" the Court's ancient "severability rule that required invalidation of an entire statute if any part of it was unconstitutionally overbroad." *Id.* at 104.

TABLE I

	Cases Challenging General Prison Conditions
1.	***Balla v. Idaho State Bd. of Corr.*, 595 F. Supp. 1558, 1569 (D. Idaho 1984)** Found deficiencies in nutrition, medical care, psychiatric care, and adequacy of clothing. *Id.* at 1575-78. Also found due process violations in connection with disciplinary procedures. *Id.* at 1582.
2.	***Battle v. Anderson*, 376 F. Supp. 402, 415 (E.D. Okl. 1974)** Prison conditions post-riot. Guards used mace and tear gas for discipline. *Id.* at 413-15, 423. Court found "systemic medical deficiencies." *Id.* at 416, 424. Plaintiffs claimed, *inter alia*, that prison failed to provide adequate law library, denied opportunity for religious gatherings, refused to provide meals that adhered to religious beliefs, and restricted reading materials. *Id.* at 407-08.
3.	***Cody v. Hilliard*, 599 F. Supp. 1025, 1058-59 (D.S.D. 1984), *aff'd*, 799 F.2d 447 (8th Cir. 1986), *rev'd in part*, 830 F.2d 912 (8th Cir. 1987) (en banc)** "The plaintiff class challenges the constitutionality under the first, fifth, sixth, eighth and fourteenth amendments to the United States Constitution of numerous conditions and practices of confinement." 599 F. Supp. at 1026. Plaintiffs complained about fire protection, ventilation, heating, lack of hot water, lighting, lack of medical and dental care, inadequate mental health care, double-celling, improper milk pasteurization, improper food storage, and various other conditions. *Id.* at 1029.

Cases Challenging General Prison Conditions	
11.	***Negron v. Preiser*, 382 F. Supp. 535 (S.D.N.Y. 1974)** Conditions applied universally within mental institution maintained by department of correction—class action challenging conditions of confinement at Mattewan State Hospital, New York. *Id.* at 537.
12.	***Nelson v. Collins*, 455 F. Supp. 727 (D. Md. 1978)** Class action brought by entire prison population, consisting of convicted felons who had committed "the most serious crimes." *Id.* at 728.
13.	***Newman v. Alabama*, 349 F. Supp. 278, 284 (M.D. Ala. 1972)** "There is a degree of neglect of basic medical needs of prisoners that could justly be called 'barbarous' and 'shocking to the conscience.'" *Id.* at 281.
14.	***Palmigiano v. Garrahy*, 443 F. Supp. 956, 975-76 (D.R.I. 1977)** "Together with the other unsanitary and dangerous conditions already detailed . . . [t]he grossly inadequate system of medical care, including psychiatric care, afforded inmates is part of the intolerable totality of conditions at the ACL which, as the Court has found, violates inmates' Eighth and Fourteenth Amendment rights." *Id.* at 983.
15.	***Ramos v. Lamm*, 639 F.2d 559, 577-78 (10th Cir. 1980)** Class action on behalf of "all persons who are now or in the future may be incarcerated in the maximum security unit of the Colorado State Penitentiary at Canon City, Colorado." *Id.* at 562.

Cases Challenging General Prison Conditions	
16.	***Ruiz v. Estelle*, 503 F. Supp. 1265 (S.D. Tex. 1980)** Class action on behalf of all past, present, and future inmates of the Texas Department of Corrections (25,575 inmates). *Id.* at 1274-75. Plaintiffs alleged "systemic constitutional violations" including "a variety of conditions and practices in TDC prisons violate the eighth and fourteenth amendments to the Constitution of the United States . . . [such as] overcrowding, security and supervision, health care, discipline, access to the courts, and other general conditions of confinement." *Id.* at 1276-77.
17.	***Sykes v. Kreiger*, 451 F. Supp. 421, 426 (N.D. Ohio 1975)** Inmates sought wide variety of rights, including counsel-substitute for disciplinary hearings, mail rights in isolation, and additional rights in connection with visitation and telephone calls. *Id.* at 423.
18.	***Tillery v. Owens*, 719 F. Supp. 1256, 1302-03 (W.D. Pa. 1989), *aff'd*, 907 F.2d 418 (3d Cir. 1990)** "[W]e find that nearly every aspect of SCIP inadequate, falling far below constitutional standards. In fact . . . we might very well order that SCIP be closed immediately; it is an overcrowded, unsanitary, and understaffed fire trap." 719 F. Supp. at 1259.
19.	***Wellman v. Faulkner*, 715 F.2d 269, 272-73 (7th Cir. 1983)** Court found "evidence of general systemic deficiencies to establish that there is deliberate indifference to serious medical needs . . ." and deficient psychiatric care. *Id.* at 272.

	Cases Challenging General Prison Conditions
20.	***Williams v. Edwards*, 547 F.2d 1206, 1217 (5th Cir. 1977)** Original complaint alleged racial discrimination against minority inmates and that "conditions at the prison violated the eighth and fourteenth amendment rights of the prison population as a whole." *Id.* at 1208. Affirmed district court finding that totality of conditions violated Eighth Amendment. *Id.* at 1211. Affirmed decision that level of medical care violated Eighth Amendment and due process clause of the Fourteenth Amendment. *Id.* at 1218-19. Medical care entirely deficient, *e.g.*, pharmacist not trained or licensed, dental clinic not inspected or accredited, "filthy" emergency equipment, unsupervised inmates performing sutures, physical therapy department whirlpool occupied by fish being kept fresh prior to eating them. *Id.* at 1215-19.

TABLE II

	Cases Not Determined On Their Merits
1.	***Bee v. Greaves*, 744 F.2d 1387 (10th Cir. 1984)** No constitutional violation found; remanded for determination after application of balancing test.
2.	***Bonner v. Arizona Dep't of Corrs.*, 714 F. Supp. 420 (D. Ariz. 1989), *on remand from Bonner v. Lewis*, 857 F.2d 559 (9th Cir. 1988)** Denied defendant's motion for summary judgment.
3.	***Bonner v. Lewis*, 857 F.2d 559 (9th Cir. 1988)** Reversed grant of summary judgment to defendant.
4.	***Cummings v. Roberts*, 628 F.2d 1065, 1068 (8th Cir. 1980)** Reversed summary judgment and remanded.
5.	***Doe v. Coughlin*, 697 F. Supp. 1234 (N.D.N.Y. 1988)** Preliminary injunction.
6.	***Duran v. Anaya*, 642 F. Supp. 510 (D.N.M. 1986)** Preliminary injunction to prevent future constitutional violation.
7.	***Eng v. Smith*, 849 F.2d 80 (2d Cir. 1988)** Preliminary injunction.
8.	***Langley v. Coughlin*, 715 F. Supp. 522, 540 (S.D.N.Y. 1989)** No decision on the merits—denial of summary judgment. Court specifically noted that plaintiffs would need to demonstrate facts to support their claims. *Id.* at 560.

Cases Not Determined On Their Merits	
9.	***Lee v. McManus*, 543 F. Supp. 386 (D. Kan. 1982)** Preliminary injunction.
10.	***Mackey v. Procunier*, 477 F.2d 877 (9th Cir. 1973)** Reversing grant of FED. R. CIV. P. 12(b)(6) motion to dismiss.
11.	***Maclin v. Freake*, 650 F.2d 885, 889 (7th Cir. 1981)** Reversing summary judgment.
12.	***Negron v. Preiser*, 382 F. Supp. 535 (S.D.N.Y. 1974)** Preliminary injunction. "[T]he Court at this time declines to hold that the conditions of the isolation cells violate the Eight[h] Amendment." *Id.* at 543.
13.	***Yarbaugh v. Roach*, 736 F. Supp. 318 (D.D.C. 1990)** Granted preliminary injunction requiring adequate medical treatment.
14.	***Young v. Harris*, 509 F. Supp. 1111, 1113 (S.D.N.Y. 1981)** Denied summary judgment to defendants.

TABLE III

	Cases That Conflate Universal Deficiencies In Medical Or Psychiatric Care With "Discrimination" On The Basis Of Disability
1.	***Balla v. Idaho State Bd. of Corr.*, 595 F. Supp. 1558, 1569 (D. Idaho 1984)** "Eighth Amendment violated where psychiatric care at prison is 'almost nonexistent.'" (U.S. Br. 20a-21a) "State violated Eighth Amendment by providing '[l]ittle or no psychiatric care or assistance' to inmates with serious mental illnesses." (Goodman Br. 30 n.15)
2.	***Battle v. Anderson*, 376 F. Supp. 402, 415 (E.D. Okl. 1974)** "Though approximately one half of the average in-patient population at the penitentiary is hospitalized for psychiatric reasons, there is no professional psychiatric staff available for treatment on a regular basis. A visiting psychiatrist makes weekly visits pursuant to an informal agreement, but he has not assumed responsibility for the care of these patients. The only 'treatment' available at the penitentiary consists of temporary relief from 'distress' through sedation." (U.S. Br. 23a-24a) "[I]nadequate mental health care in state prison violated Eighth Amendment" (Goodman Br. 30 n.15)

Cases That Conflate Universal Deficiencies In Medical Or Psychiatric Care With "Discrimination" On The Basis Of Disability	
3.	***Cody v. Hilliard*, 599 F. Supp. 1025, 1058-59 (D.S.D. 1984), *aff'd*, 799 F.2d 447 (8th Cir. 1986), *rev'd in part*, 830 F.2d 912 (8th Cir. 1987) (en banc)** Trial court found, and Eighth Circuit affirmed, finding of **no equal protection violation** in connection with protective custody inmates' limited access to opportunities **because of legitimate balancing against rational basis for restrictions**. 599 F. Supp. at 1055. Both courts initially held double-celling there, as well as in general population, constitutionally barred, *id.* at 1055; 799 F.2d at 450, but Eighth Circuit reversed this holding on rehearing *en banc*, 830 F.2d at 914, finding that "[t]he record in this case falls far short of supporting the District Court's conclusion . . . [T]here is no constitutional basis for the District Court's remedial order with respect to double-celling." *Id.*
4.	***Duran v. Anaya*, 642 F. Supp. 510 (D.N.M. 1986)** Court granted preliminary injunction to *prevent* proposed staff reductions that would probably not permit maintenance of minimal constitutional standards in medical care, mental health care, and security. Court concerned itself with prison's "obligation to provide a level of medical care that is reasonably designed to meet the routine and emergency health care needs of prisoners . . . with respect to medical care, dental care, and psychiatric care." *Id.* at 575.

	Cases That Conflate Universal Deficiencies In Medical Or Psychiatric Care With "Discrimination" On The Basis Of Disability
5.	***Eng v. Smith*, 849 F.2d 80 (2d Cir. 1988)** Affirming grant of preliminary injunction where district court had sufficient evidence of "systemic deficiencies in Attica's mental health system" but specifically declined to decide whether problems met "deliberate indifference" standard. *Id.* at 82-83.
6.	***Inmates of Occoquan v. Barry*, 717 F. Supp. 854 (D.D.C. 1989)** Class action claiming Eighth Amendment violations and seeking declaratory and injunctive relief for "excessive inmate population; deficiencies in environmental health and safety; food services; fire safety; medical and dental services; and mental health care." *Id.* at 854.
7.	***Inmates of the Allegheny County Jail v. Peirce*, 487 F. Supp. 638 (W.D. Pa. 1980)** "[L]ack of mental health treatment being given to mentally ill inmates in a county jail amounted to deliberate indifference." (U.S. Br. 22a)
8.	***James v. Wallace*, 382 F. Supp. 1177 (M.D. Ala. 1974)** "[D]enying defendants' motion to dismiss suit alleging that prisoners had been refused the opportunity to rehabilitate themselves, that prisoners had been arbitrarily and capriciously assigned to units which have no treatment facilities for mental or physical disabilities, and that unreasonable restrictions had been placed on prisoners' visitation rights." (U.S. Br. 23a)

	Cases That Conflate Universal Deficiencies In Medical Or Psychiatric Care With "Discrimination" On The Basis Of Disability
9.	***Laaman v. Helgemoe*, 437 F. Supp. 269 (D.N.H. 1977)** "[P]sychiatric treatment at prison was 'basically nonexistent' in spite of the fact that as much as *40%* of inmate population needed intensive psychiatric treatment." (U.S. Br. 23a) Court specifically noted that information about mental illness at this prison "was based on national statistics concerning prison populations in general and not upon specific information concerning NHSP." *Id.* at 276 n.1.
10.	***Langley v. Coughlin*, 715 F. Supp. 522, 540 (S.D.N.Y. 1989)** "[T]riable issues of fact existed as to whether there had been inadequate medical care for the serious needs of mentally ill inmates in violation of the Eighth Amendment." (U.S. Br. 19a)
11.	***Lightfoot v. Walker*, 486 F. Supp. 504 (S.D. Ill. 1980)** "[H]ealth care system and environmental conditions and practices at state prison violated Eighth and Fourteenth Amendments where they led to unnecessary suffering due to deliberate indifference and misadministration of prison officials which was so gross as to be deemed wilful." (U.S. Br. 22a)
12.	***Mitchell v. Untreiner*, 421 F. Supp. 886, 891 (N.D. Fla. 1976)** "Eighth Amendment violation where no psychological or psychiatric treatment available for inmates with mental illness." (Goodman Br. at 30 n.15)

Cases That Conflate Universal Deficiencies In Medical Or Psychiatric Care With "Discrimination" On The Basis Of Disability	
13.	***Nelson v. Collins*, 455 F. Supp. 727 (D. Md. 1978)** "Eighth Amendment violated when prison confined mentally ill inmates to isolation cells where they did not have adequate access to needed psychiatric or other medical treatment." (U.S. Br. 22a)
14.	***Newman v. Alabama*, 349 F. Supp. 278, 284 (M.D. Ala. 1972)** "The fate of those many prisoners who are mentally ill or retarded deserves special mention. Mental illness and mental retardation are the most prevalent medical problems in the Alabama prison system. It is estimated that approximately 10 percent of the inmates are psychotic and another 60 percent are disturbed enough to require treatment. To diagnose and treat these almost 2400 inmates, the Board of Corrections employs one clinical psychologist, who works one afternoon each week at the [Medical and Diagnostic Center]. There are no psychiatrists, social workers, or counselors on the staff. Severe, and sometimes dangerous, psychotics are regularly placed in the general population. If they become violent, they are removed to lockup cells which are not equipped with restraints or padding and where they are unattended. While some do obtain interviews with qualified medical personnel and a few are eventually transferred for treatment to a state mental hospital, the large majority of mentally disturbed prisoners receive no treatment whatsoever. It is tautological that such care is constitutionally inadequate." (U.S. Br. 24a-25a) "Eighth Amendment violation where 'the large majority of mentally disturbed inmates receive no treatment whatsoever.'" (Goodman Br. 30 n.15)

	Cases That Conflate Universal Deficiencies In Medical Or Psychiatric Care With "Discrimination" On The Basis Of Disability
15.	***Palmigiano v. Garrahy*, 443 F. Supp. 956, 975-76 (D.R.I. 1977)** "The deliberate indifference displayed by the defendants to the serious medical needs of drug dependant inmates leads to unnecessary and inevitable suffering." (U.S. Br. 22a-23a) "[I]nadequate mental health care in state prison violated Eighth Amendment." (Goodman Br. 30 n.15)
16.	***Ramos v. Lamm*, 639 F.2d 559, 577-78 (10th Cir. 1980)** "[D]enial of adequate mental health care, resulting in suffering, suicides, and self mutilation by inmates violated Eighth Amendment." (Goodman Br. 30 n.15.)
17.	***Tillery v. Owens*, 719 F. Supp. 1256, 1302-03 (W.D. Pa. 1989), *aff'd*, 907 F.2d 418 (3d Cir. 1990)** "[P]rison officials showed deliberate indifference to inmates' medical, dental, and psychiatric care needs, in violation of the Eighth Amendment, where, due to overcrowding, officials had failed to provide adequate staffing and equipment, and failed to maintain an environment conducive to treatment of serious medical illness." (U.S. Br. 19a) "[I]nadequate care of 'serious mental illness' violated Eighth Amendment." (Goodman Br. 30 n.15)
18.	***Wellman v. Faulkner*, 715 F.2d 269, 272-73 (7th Cir. 1983)** "[D]enial of adequate psychiatric care to inmates with mental illness violated Eighth Amendment." (Goodman Br. 30 n.15)

Cases That Conflate Universal Deficiencies In Medical Or Psychiatric Care With "Discrimination" On The Basis Of Disability	
19.	***Williams v. Edwards*, 547 F2d 1206, 1217 (5th Cir. 1977)** "[U]pholding finding of Eighth Amendment violations where prison provided no mental health care despite finding that 40% of inmates would benefit from psychiatric treatment." (U.S. Br. 8a)

Cases Challenging General Prison Conditions	
4.	***Duran v. Anaya*, 642 F. Supp. 510 (D.N.M. 1986)** Court granted preliminary injunction to *prevent* proposed staff reductions that would probably not permit maintenance of minimal constitutional standards in medical care, mental health care, and security. *Id.* at 575.
5.	***Inmates of Occoquan v. Barry*, 717 F. Supp. 854 (D.D.C. 1989)** Class action claiming Eighth Amendment violations and seeking declaratory and injunctive relief for "excessive inmate population; deficiencies in environmental health and safety; food services; fire safety; medical and dental services; and mental health care." *Id.* at 854.
6.	***James v. Wallace*, 382 F. Supp. 1177 (M.D. Ala. 1974)** Class plaintiffs sought declaratory and injunctive relief for prison conditions without adequate treatment, reform, or rehabilitation, claiming this violated their rights under the Eighth and Fourteenth Amendments. *Id.* at 1178.
7.	***Kendrick v. Bland*, 541 F. Supp. 21 (W.D. Ky. 1981)** Class action brought by prisoners at Kentucky State Penitentiary regarding broad range of conditions, necessitating broad consent decree in areas such as crowding, vocational and educational programs, food service, due process for disciplinary procedures, religion, inmate mail, access to the courts, medical and mental health services and racial discrimination. *Id.* at 22, 27-49.

	Cases Challenging General Prison Conditions
8.	***Laaman v. Helgemoe*, 437 F. Supp. 269 (D.N.H. 1977)** Class action on behalf of entire prison population detailing a multitude of deficiencies in conditions at entire facility. Court entered a 16-category order regarding aspects to be corrected. Found medical services and facilities deficient as a whole, and found totality of conditions deficient. *Id.* at 324-25.
9.	***Lightfoot v. Walker*, 486 F. Supp. 504 (S.D. Ill. 1980)** Class action "for the benefit of all prisoners . . . seeking declaratory and injunctive relief [] to stop state prison officials from maintaining an inadequate health care system for the prisoners . . . ." *Id.* at 505. "Based on the totality of the evidence, the Court finds that these inadequacies result in a health care delivery system so wholly inadequate as to lead to unnecessary suffering to the plaintiff class." *Id.* at 525. "The abysmal conditions throughout the housing units, segregation, reception and classification, the medical unit and food services have continued to exist for years and, indeed . . . have worsened in some respects . . . ." *Id.* at 513.
10.	***Mitchell v. Untreiner*, 421 F. Supp. 886, 891 (N.D. Fla. 1976)** Court held that "the punitive and inhumane conditions of confinement within the Escambia County Jail clearly violate inmates' rights under the First, Fourth, Fifth, Sixth, Eighth, Ninth and Fourteenth Amendments . . . The totality of circumstance of confinement . . . and the sub-human level of existence imposed there violates all civilized concepts of human rights." *Id.* at 893, 896.

Cases Involving Non-Disabled Inmates Subjected To Like Conditions	
7.	***Ramos v. Lamm*, 639 F.2d 559, 577-78 (10th Cir. 1980)** "[I]n some instances inmates are not provided with enough cleaning supplies to allow them to adequately clean their own cells." *Id.* at 570. Court found inadequate ventilation, stagnant air, excessive mold and fungus growth, and rodent and insect infestation. *Id.* at 569. Upheld finding that "conditions in the food service areas . . . fail to meet any known public health standards." *Id.* at 570-71. Upheld finding that "the State has failed to reasonably protect inmates from constant threats of violence and assaults from other inmates and that this failure violates the inmates' constitutional rights under the Eighth Amendment." *Id.* at 574.
8.	***Ruiz v. Estelle*, 503 F. Supp. 1265 (S.D. Tex. 1980)** In typical cells, "[t]he usable, unobstructed space in the cell amounts to an aera approximately seven and one-half feet long and three feet wide, totaling 22.5-square feet. So cramped is such a cell that two standing persons must squeeze by each other to pass, and an average man can stand in the center of the cell and touch both walls with outstretched arms . . . . [I]nmates assigned to these forty-five square foot TDC cells can do little more than sit or lie on their bunks or the floor, or use the sanitary facilities." *Id.* at 1278. "Occasionally, four- and sometimes even five-inmates are assigned to one cell . . . . With five inmates, three must sleep on the floor, squeezed between the bars in front and the toilet in the rear of the cell. Inmates have been compelled to endure this latter type of confinement for days or even weeks at a time . . . ." *Id.*

TABLE IV

Cases Involving Non-Disabled Inmates Subjected To Like Conditions	
1.	***Cortes-Quinones v. Jimenez-Nettleship*, 842 F.2d 556 (1st Cir. 1988)** Space per prisoner was 15.5 sq. ft. *Id.* at 558.
2.	***Inmates of Occoquan v. Barry*, 717 F. Supp. 854 (D.D.C. 1989)** Court found Eighth Amendment violations "in the areas of sanitation, bathroom facilities, fire safety, health care, and staffing." *Id.* at 869. Bathrooms had "slime oozing down the walls, stalactites hanging from the ceiling, thick soap scum on the walls and floors, and sewer water dripping into toilets," and "neither proper cleaning supplies nor cleaning tools are provided." *Id.* at 866. Finding "systemic" problems with toilets, noting that "[n]umerous toilets did not work and leaking pipes were found throughout the . . . [f]acility." *Id.* at 856.
3.	***Lightfoot v. Walker*, 486 F. Supp. 504 (S.D. Ill. 1980)** Some prisoners double-celled with 18 to 32 square feet of space per inmate. *Id.* at 510.

Cases Involving Non-Disabled Inmates Subjected To Like Conditions	
4.	***Mitchell v. Untreiner*, 421 F. Supp. 886, 891 (N.D. Fla. 1976)** Court held that "the punitive and inhumane conditions of confinement within the Escambia County Jail clearly violate inmates' rights under the First, Fourth, Fifth, Sixth, Eighth, Ninth and Fourteenth Amendments . . . The totality of circumstance of confinement . . . and the sub-human level of existence imposed there violates all civilzed concepts of human rights." *Id.* at 893, 896. Jail so crowded that "Mitchell, a fifteen year old juvenile male, had been . . . incarcerated awaiting trial with other juvenile males in a cell constructed to sleep three persons but which housed as many as eleven persons . . . One 8' x 8' four bed cell sometimes housed as many as six inmates necessitating that two of them sleep on the floor next to the toilet, sometimes without a mattress." *Id.* at 889. "Indigent inmates are not provided with the basic necessities of hygiene . . . Maintaining sanitation of the cells is left up to the inmates . . . Mice and roaches are infested throughout the building." *Id.* at 889.
5.	***Nelson v. Collins*, 455 F. Supp. 727 (D. Md. 1978)** Class action brought by entire prison population, consisting of convicted felons who had committed "the most serious crimes," *id.* at 728, seeking injunctive relief for overcrowding. Two inmates per 44 sq. ft. cell; only one inmate could move around at a time. *Id.* at 734. Court ordered defendants to seek solutions for overcrowding, found it violates Eighth Amendment. *Id.* at 730-31.

Cases Involving Non-Disabled Inmates Subjected To Like Conditions	
6.	***Palmigiano v. Garrahy*, 443 F. Supp. 956, 975-76 (D.R.I. 1977)** "Plumbing throughout Maximum is unsanitary, inadequate, and an imminent danger to public health . . . Only cold water is available in inmate cells . . . Pipes are not equipped with vacuum breakers, creating an ever-present danger that waste water will back up into the fresh water system, even in the food preparation area . . . The damp conditions in the service areas are an ideal breeding ground for the swarming cockroaches, which exist in all stages of development . . . In the lavatories, the Court observed large pools of standing water on the floor, and apparently this is always present. There was a stench of urine coming from this water. The shower areas were filthy, covered with mold and mildew on the floors and the walls. Glass, trash, and dead cockroaches are everywhere on the shower floors." *Id.* at 961.

Cases Involving Non-Disabled Inmates Subjected To Like Conditions	
9.	***Sykes v. Kreiger*, 451 F. Supp. 421, 426 (N.D. Ohio 1975)** Crowding conditions provide between 13 and 35 sq. ft. and 140.2 cubic ft. sleeping area per inmate. 451 F. Supp. at 423. Found 5th and 14th Amendment violations as a result of crowding. *Id.* at 424.
10.	***Tillery v. Owens*, 719 F. Supp. 1256, 1302-03 (W.D. Pa. 1989), *aff'd*, 907 F.2d 418 (3d Cir. 1990)** "[W]e find that nearly every aspect of SCIP inadequate, falling far below constitutional standards. In fact . . . we might very well order that SCIP be closed immediately; it is an overcrowded, unsanitary, and understaffed fire trap." *Id.* at 1259. Inmates double-celled in 8x7 cells. In some, "inmates . . . can do little more than lie or sit on their bunks or desks." *Id.* at 1264.
11.	***Wellman v. Faulkner*, 715 F.2d 269, 272-73 (7th Cir. 1983)** Found unconstitutional overcrowding. *Id.* at 274. Some inmates spend 22-23½ hours per day in cells with one 17 square feet of floor space. *Id.*
12.	***Williams v. Edwards*, 547 F.2d 1206, 1217 (5th Cir. 1977)** Remanded crowding claims. *Id.* at 1214-15. Normal cell size was 6 x 8 feet in some cases. *Id.* at 1215.

TABLE V

	Cases Involving Federal Or Local Government Facilities Rather Than State Facilities
1.	***Bee v. Greaves*, 744 F.2d 1387 (10th Cir. 1984)** Pretrial detainee in Salt Lake County Jail. *Id.* at 1389.
2.	***Cortes-Quinones v. Jimenez-Nettleship*, 842 F.2d 556 (1st Cir.)** Arecibo District Jail. *Id.* at 558.
3.	***Cummings v. Roberts*, 628 F.2d 1065, 1068 (8th Cir. 1980)** Pretrial detainee at St Louis County Jail. *Id.* at 1066.
4.	***Inmates of the Allegheny County Jail v. Peirce*, 487 F. Supp. 638 (W.D. Pa. 1980)** Allegheny County Jail. *Id.* at 639.
5.	***Johnson v. Hardin County*, 908 F.2d 1280, 1284 (6th Cir. 1990)** Hardin County Detention Center, Kentucky. Court specifically found evidence insufficient to show that county, rather than individual officers, were responsible for treatment. *Id.* at 1285-87.
6.	***LaFaut v. Smith*, 834 F.2d 389 (4th Cir. 1987)** Federal Correctional Institution, Butner, North Carolina. *Id.* at 389.
7.	***Leach v. Shelby County Sheriff*, 891 F.2d 1241, 1243-44 (6th Cir. 1989)** Shelby County Jail, Tennessee; "Leach's suit against the Mayor and the Sheriff of Shelby County in their official capacities is, therefore, essentially and for all purposes, a suit against the County itself." *Id.* at 1241.

	Cases Involving Federal Or Local Government Facilities Rather Than State Facilities
8.	***Littlefield v. Deland*, 641 F.2d 729 (10th Cir. 1981)** Pretrial detainee at Salt Lake City County Jail. *Id.* at 730-31.
9.	***Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984)** County jails. *Id.* at 1454.
10.	***Mandel v. Doe*, 888 F.2d 783 (11th Cir. 1989)** Inmate at a "county road prison" in Escambia County, Florida. *Id.* at 785.
11.	***Miranda v. Munoz*, 770 F.2d 255, 259 (1st Cir. 1985)** Pretrial detainee at Arecibo District Jail. *Id.* at 257.
12.	***Mitchell v. Untreiner*, 421 F. Supp. 886, 891 (N.D. Fla. 1976)** Escambia County Jail, Florida. *Id.* at 888.
13.	***Mullen v. Smith*, 738 F.2d 317, 318 (8th Cir. 1984)** Federal Correctional Institution in El Reno, Oklahoma. *Id.* at 317.
14.	***Sykes v. Kreiger*, 451 F. Supp. 421, 426 (N.D. Ohio 1975)** Class action regarding variety of conditions in Cuyahoga County Jail, brought on behalf of "persons confined at Cuyahoga County Jail . . . for reasons other than as punishment resulting from a conviction of a criminal offense." *Id.* at 423.
15.	***Thompson v. City of Portland*, 620 F. Supp. 482, 485-87 (D. Me. 1985)** City of Portland police and county jail. *Id.* at 484-85.

Cases Involving Federal Or Local Government Facilities Rather Than State Facilities	
16.	***Yarbaugh v. Roach*, 736 F. Supp. 318 (D.D.C. 1990)** D.C. Detention Facility Infirmary. *Id.* at 318.

TABLE VI

	Cases Cited By Petitioners And Not Included In Foregoing Categories
1.	***Burchett v. Bower*, 355 F. Supp. 1278 (D. Ariz. 1973)** Summary judgment granting plaintiff a right to hearing before terminating mental treatment and transferring him back to prison. *Id.* at 1281.
2.	***Delafose v. Manson*, 385 F. Supp. 1115 (D. Conn. 1974)** "[P]rison practice of paying inmates who were receiving treatment for physical ailments *38* cents per day hospital pay while denying such payment to those receiving treatment for mental ailments denied equal protection to those receiving treatment for mental illness." (U.S. Br. 23a) (More similar to Title I employment-discrimination claims.)
3.	***Flakes v. Percy*, 511 F. Supp. 1325 (W.D. Wis. 1981)** Suit regarding conditions in hospital that housed convicted persons, persons incompetent to stand trial, and civilly committed persons. *Id.* at 1326. Some wards had no toilets in cells and patients used chamber pots when locked in. *Id.* at 1327-29. Court held violation of Eighth Amendment to lock a person in a cell without a toilet and that Eighth Amendment applied to hospital. *Id.* at 1332-34. Court also found substantive due process under Fourteenth Amendment guarantees minimally adequate treatment to an involuntarily confined person with mental illness. *Id.* at 1339. Found violation of substantive due process rights of plaintiff class. *Id.* at 1340.

Cases Cited By Petitioners And Not Included In Foregoing Categories	
4.	***Knecht v. Gillman*, 488 F.2d 1136 (8th Cir. 1973)** Enjoined use of injections that induced vomiting as punishment or disciplinary measure in State mental institution. Population included civilly committed as well as prisoners. *Id.* at 1138. Institution at issue was the Iowa Security Medical Facility, not a prison. *Id.* (quoting Iowa Code § 223.1 (1973)).
5.	***Maynard v. New Jersey*, 719 F. Supp. 292 (D.N.J. 1989)** Court held Eleventh Amendment barred claim against State for failure to diagnose and treat inmate with AIDS. *Id.* at 296. Granted motion to dismiss as to State but denied as to prison medical personnel. *Id.* at 296-97.

Cases Cited By Petitioners And Not Included In Foregoing Categories	
6.	***Negron v. Ward*, 458 F. Supp. 748 (S.D.N.Y. 1978)** Plaintiff-inmates were confined in the Mattewan State Hospital for the Criminally Insane. *Id.* at 749. Following an altercation, plaintiffs were removed from their open ward and confined in a secluded ward. *Id.* at 750. Jury determined that this ward transfer was for the purpose of punishment. *Id.* at 761. Not a claim for discrimination. Plaintiffs were mentally ill inmates housed among other mentally ill inmates who complained at being isolated for disciplinary reasons. Does not establish constitutional violations that resulted from intentional discrimination on the basis of disability—jury specifically found that inmates were secluded for punishment. *Id.* at 760-61. Plaintiffs complained that they were deprived of their right to treatment without due process. Jury found in favor of plaintiffs and awarded compensatory damages. Court denied motion for JNOV, explaining that plaintiffs were entitled to a hearing before being deprived of their treatment. *Id.* at 755. Court held that plaintiffs had an entitlement to psychiatric treatment unimpeded by punitive confinement imposed without due process. *Id.* at 759.
7.	***Parrish v. Johnson*, 800 F.2d 600, 605 (6th Cir. 1986)** Sixth Circuit reversed and remanded trial court's award of nominal damages for constitutional violations for one prison guard's cruelty to two paraplegic inmates. *Id.* at 602. Declined to evaluate one inmate's claim under Fourteenth Amendment because "the Fourteenth Amendment provides a prisoner with no greater protection than the Eighth Amendment." *Id.* at 604 n.5.

Cases Cited By Petitioners And Not Included In Foregoing Categories	
8.	***Sites v. McKenzie*, 423 F. Supp. 1190 (N.D. W. Va. 1976)** Found due process safeguards in statute used to commit prisoners to mental institution to be "procedurally and substantively deficient in comparison to the protections . . . under the civil commitment statute." *Id.* at 1193. No rational basis for distinguishing between civilly insane and criminally insane. *Id.* at 1194. Equal protection violation also found where prisoners in mental hospitals did not have opportunity for parole at end of sentence unless they had recovered. *Id.* at 1194-95. Found violation of Rehabilitation Act where plaintiffs were executed from vocational rehabilitation opportunities because of mental illness. *Id.* at 1197. Not a claim for disability discrimination. Here, mentally disabled inmates were seeking treatment equal to that of civilly committed mentally ill, or same treatment as similarly disabled non-prisoners.
9.	***Talley v. Stephens*, 247 F. Supp. 683, 687 (E.D. Ark. 1965)** Sought injunction against summary corporal punishment. *Id.* at 685, 687. Inmates forced to harvest crops and subjected to summary whipping if work insufficient by subjective and unrestrained judgment of assistant wardens. *Id.* at 687-88. Not a claim for disability discrimination. Court noted that two plaintiffs were "laboring under serious physical handicaps [and] that their physical condition has been classified as 'poor' by the prison physician" (*id.* at 687) but did not specify further. Plaintiffs also claimed denial of access to the courts (*id.* at 690-91) and denial of "needed medical attention: (*id.* at 685).

Cases Cited By Petitioners And Not Included In Foregoing Categories	
10.	***Vitek v. Jones*, 445 U.S. 480 (1980)** Held that prisoners are entitled to due process protections prior to involuntary transfer to mental hospital. *Id.* at 487-96. No claim that prisoners were being transferred because of intentional, irrational State discrimination.
11.	***Waldrop v. Evans*, 681 F. Supp. 840 (M.D. Ga. 1988)** Mentally ill inmate rendered himself totally blind and without testicles as a result of a series of self-mutilatory acts while in prison. *Id.* at 844. Had seen a series of prison doctors and mental health professionals and had received treatment along the way. *Id.* at 842-44. Court granted summary judgment to nine individual defendants, including some health professionals and the high-ranking prison administrators that had been named, as to plaintiff's deliberate indifference claims. *Id.* at 862. Denied summary judgment to two of the doctors, finding fact questions as to treatment decisions they made. *Id.* at 854-55. Court specifically found that psychiatric staffing was adequate. *Id.* at 849. In explaining why Commissioner and Superintendent could not be found deliberately indifferent, court specifically found that "GDCC was adequately staffed with medical professionals including three staff physicians and one consulting psychiatrist." *Id.* at 849.

TABLE VII

	Case Analysis
1.	***Balla v. Idaho State Bd. of Corr.*, 595 F. Supp. 1558, 1569 (D. Idaho 1984)** *PETITIONERS' DESCRIPTION*—"Eighth Amendment violated where psychiatric care at prison is "almost nonexistent" (U.S. Br. 20a-21a.) "State violated Eighth Amendment by providing '[l]ittle or no psychiatric care or assistance' to inmates with serious mental illnesses." (Goodman Br. 30 n.15) *COMMENTS*—Found deficiencies in nutrition, medical care, psychiatric care, and adequacy of clothing. 595 F. Supp. at 1575-78. Also found due process violations in connection with procedures for disciplinary procedures. *Id.* at 1582. Noted that three individuals had medical conditions that resulted in special dietary requirements that were not being met. *Id.* at 1565. Court ordered these needs to be met. *Id.* at 1574-75.

Case Analysis	
2.	***Battle v. Anderson*, 376 F. Supp. 402, 415 (E.D. Okl. 1974)** *PETITIONERS' DESCRIPTION*—"Though approximately one half of the average in-patient population at the penitentiary is hospitalized for psychiatric reasons, there is no professional psychiatric staff available for treatment on a regular basis. A visiting psychiatrist makes weekly visits pursuant to an informal agreement, but he has not assumed responsibility for the care of these patients. The only 'treatment' available at the penitentiary consists of temporary relief from 'distress' through sedation." (U.S. Br. 23a-24a) "[I]nadequate mental health care in state prison violated Eighth Amendment" (Goodman Br. 30 n.15) *COMMENTS*—Prison conditions post-riot. Guards used mace and tear gas for discipline. 376 F. Supp. at 413-15, 423. Court found "systemic medical deficiencies." *Id.* at 416. Plaintiffs claimed, *inter alia*, that prison failed to provide adequate law library, denied opportunity for religious gatherings, refused to provide meals that adhered to religious beliefs, and restricted reading materials. *Id.* at 407-08. Court denied monetary damages. *Id.* at 420.

Case Analysis	
3.	***Bee v. Greaves*, 744 F.2d 1387 (10th Cir. 1984)** *PETITIONERS' DESCRIPTION*—"[G]enuine issue of material fact as to whether an emergency existed and as to whether forcible medication for an indefinite period was an exaggerated response, where pretrial detainee claimed he was forced to take antipsychotic drug thorazine against his will" (U.S. Br. 7a) *COMMENTS*—Hallucinating inmate first demanded—and received—Thorazine, then after taking it voluntarily for two months, refused it. 744 F.2d at 1389-90. Jail psychiatrist forced it for purportedly medical reasons. Plaintiff claimed Fourteenth Amendment liberty interest in avoiding forced medication without due process. *Id.* at 1391. Court held that a pretrial detainee has a liberty interest in avoiding unwanted treatment but the liberty interest is not absolute and must be balanced against the State's interests. *Id.* at 1394. Reversed grant of summary judgment and remanded for proper balancing test. *Id.* at 1397.

	Case Analysis
4.	***Bonner v. Arizona Dep't of Corrs.*, 714 F. Supp. 420 (D. Ariz. 1989), *on remand from Bonner v. Lewis*, 857 F.2d 559 (9th Cir. 1988)** *PETITIONERS' DESCRIPTION*—"[D]eaf, mute, and vision impaired inmate denied communication assistance, including in disciplinary proceedings, counseling sessions, and medical treatment" (U.S. Br. 19a) "Due Process Clause requires that "deaf, mute, and vision-impaired inmate" receive an interpreter in disciplinary proceedings against him" (Goodman Br. 18) *COMMENTS*—On remand, court denied defendant's motion for summary judgment as to plaintiff's claim for a qualified sign language interpreter at disciplinary hearings, finding constitutionally protected due process liberty interest. 714 F. Supp. at 425. Also denied summary judgment as to plaintiff's Rehabilitation Act claim. *Id.* at 422-23. Granted summary judgment against plaintiff's claim that he had a due process liberty interest in remaining in general prison population by avoiding protective lockdown, finding that "[s]o long as the conditions of confinement do not violate constitutional norms," plaintiff had "no constitutionally protected liberty interest in assignment to a particular part of the prison." *Id.* at 424-25.

	Case Analysis
5.	***Bonner v. Lewis*, 857 F.2d 559 (9th Cir. 1988)** *PETITIONERS' DESCRIPTION*—"[R]eversing grant of summary judgment to defendant on inmate's Section 504 claim where inmate, who is deaf, mute, and suffers from a severe progressive vision loss, was not provided with a sign-language interpreter for counseling sessions, administrative or disciplinary hearings, or medical appointments" (U.S. Br. 6a) *COMMENTS*—Affirmed summary judgment against deaf inmate's equal protection and Eighth Amendment claims for sign language interpreter at, *inter alia*, disciplinary hearings. 857 F.2d at 565-66. Remanded due process claims to determine whether the statutes and regulations governing protective lockdown created a liberty interest. *Id.* at 564-65. Found *no* equal protection violation and *no* Eighth Amendment violation as to some of inmate's claims. *Id.* at 565-66. Remanded Rehabilitation Act claims because of genuine issues of material fact. *Id.* at 564.
6.	***Burchett v. Bower*, 355 F. Supp. 1278 (D. Ariz. 1973)** *PETITIONERS' DESCRIPTION*—"[A]dministrator of state hospital and director of its maximum security ward had to comply with requirements of due process and equal protection before right of mentally ill state prisoner to treatment at hospital could be terminated" (U.S. Br. 24a) *COMMENTS*— Partial summary judgment granting plaintiff a right to hearing before terminating mental treatmen and transferring him back to prison. 355 F. Supp. at 1283. Continued restraining order (previously entered) as permanent injunction against transfer without due process. *Id.*

	Case Analysis
7.	***Cody v. Hilliard*, 599 F. Supp. 1025, 1058-59 (D.S.D. 1984), *aff'd*, 799 F.2d at 447 (8th Cir. 1986), *rev'd in part*, 830 F.2d 912 (8th Cir. 1987) (en banc)** *PETITIONERS' DESCRIPTION*—"[D]enial of adequate mental health care to inmates with 'serious psychiatric needs' violated Eighth Amendment" (Goodman Br. 30 n.15) *COMMENTS*—Class action on behalf of "all persons who are now or will be incarcerated in the South Dakota State Penitentiary . . . or in the Women's . . . Facility." 599 F. Supp. at 1026. Trial court found, and Eighth Circuit affirmed, finding of **no equal protection violation** in connection with protective custody inmates' limited access to opportunities **because of legitimate balancing against rational basis for restrictions**. *Id.* at 1055. Both courts did hold double-celling there as well as in general population constitutionally barred, *id.* at 1055; 799 F.2d at 450, but Eighth Circuit reversed this finding on rehearing *en banc*, 830 F.2d at 914, finding that "[t]he record in this case falls far short of supporting the District Court's conclusion . . . [T]here is no constitutional basis for the District Court's remedial order with respect to double-celling." *Id.*

	Case Analysis
	"The plaintiff class challenges the constitutionality under the first, fifth, sixth, eighth and fourteenth amendments to the United States Constitution of numerous conditions and practices of confinement." 599 F. Supp. at 1026. Plaintiffs complained about fire protection, ventilation, heating, lack of hot water, lighting, lack of medical and dental care, inadequate mental health care, double-celling, improper milk pasteurization, improper food storage, and various other conditions. *Id.* at 1029. Complained that protective custody inmates are denied equal protection as applied to other inmates because of double-celling in protective custody and because of limited educational and job opportunities. *Id.* at 1054. Prison maintains a "special diet" line but no special line for diabetics, but court notes that "these deficiencies are offset by the reasonable attempts made by the SDSP nurses to educate these diabetic inmates on a one-to-one basis regarding their special diabetic needs" and that "these inmates can make appropriate food selections from either the general or special diet line in order to properly control their diet." *Id.* at 1039. Found that prison "makes adequate provisions" for special dietary needs. *Id.* at 1057. Court found some aspects of medical and psychiatric care deficient. Found totality of conditions violated Eighth and Fourteenth Amendments. *Id.* at 1062. On rehearing *en banc*, Eighth Circuit noted that "the Constitution does not mandate comfortable prisons, and prisons . . . which house persons convicted of serious crimes[] cannot be free of discomfort." 830 F.2d at 916.

	Case Analysis
10.	***Delafose v. Manson*, 385 F. Supp. 1115 (D. Conn. 1974)** *PETITIONERS' DESCRIPTION*—"[P]rison practice of paying inmates who were receiving treatment for physical ailments *38* cents per day hospital pay while denying such payment to those receiving treatment for mental ailments denied equal protection to those receiving treatment for mental illness." (U.S. Br. 23a) *COMMENTS*—Inmates hospitalized for physical ailments received 38¢ per day "hospital pay," but those hospitalized for mental ailments did not. 385 F. Supp. at 1116-17. (More similar to Title I employment-discrimination claims.)
11.	***Doe v. Coughlin*, 697 F. Supp. 1234 (N.D.N.Y. 1988)** *PETITIONERS' DESCRIPTION*—"[P]reliminary injunction granted in class action seeking to prohibit further implementation of a program involving the involuntary transfer to a separate dormitory of inmates who had tested positive for HIV." (U.S. Br. 19a-20a) *COMMENTS*—Court granted preliminary injunction to HIV-positive inmates to prevent involuntary transfer to HIV ward on privacy grounds. 697 F. Supp. at 1243. Decided on privacy grounds—court specifically noted rejection of same claim when it had been brought under Fourteenth Amendment. *Id.* at 1236.

Case Analysis	
14.	***Flakes v. Percy*, 511 F. Supp. 1325 (W.D. Wis. 1981)** *PETITIONERS' DESCRIPTION*—"[L]ocking persons confined in a maximum security mental hospital, for any significant time, in a cell lacking a flush toilet and wash bowl was cruel and unusual punishment." (U.S. Br. 21a) *COMMENTS*—Suit regarding conditions in Central State Hospital that housed convicted persons, persons incompetent to stand trial, and civilly committed persons. 511 F. Supp. at 1326. Some wards had no toilets in cells and patients used chamber pots when locked in. *Id.* at 1326-29. Court held violation of Eighth Amendment to lock a person in a cell without a toilet and that Eighth Amendment applied to hospital. *Id.* at 1332-34. Court also found that substantive due process under Fourteenth Amendment guarantees minimally adequate treatment to an involuntarily confined person with mental illness. *Id.* at 1339. Found violation of substantive due process rights of plaintiff class. *Id.* at 1340.

	Case Analysis
15.	***Inmates of Occoquan v. Barry*, 717 F. Supp. 854 (D.C.D.C. 1989)** *PETITIONERS' DESCRIPTION*—"[H]ousing inmates with mental health problems with punitive segregation inmates violated the Eighth Amendment." (U.S. Br. 19a) *COMMENTS*—Class action claiming Eighth Amendment violations and seeking declaratory and injunctive relief for "excessive inmate population; deficiencies in environmental health and safety; food services; fire safety; medical and dental services; and mental health care." 717 F. Supp. at 854. Court found Eighth Amendment violations "in the areas of sanitation, bathroom facilities, fire safety, health care, and staffing." *Id.* at 869. Finding "systemic" problems with toilets, noting that "[n]umerous toilets did not work and leaking pipes were found throughout the . . . [f]acility." *Id.* at 856. Bathrooms had "slime oozing down the walls, stalactites hanging from the ceiling, thick soap scum on the walls and floors, and sewer water dripping into toilets," and "neither proper cleaning supplies nor cleaning tools are provided." *Id.* at 866. Court found that housing mentally ill inmates in block with inmates in punitive and administrative segregation, locking them in their cells for 23 hours per day—"because there is nowhere else to put them—and not given any treatment, showed a deliberate indifference to their psychiatric needs. *Id.* at 863-64, 868. Court also found that housing protective custody inmates in same block with punitive segregation inmates violated Eighth Amendment as "beyond the range of their punishment." *Id.* at 867.

Case Analysis	
16.	***Inmates of the Allegheny County Jail v. Peirce*, 487 F. Supp. 638 (W.D. Pa. 1980)** *PETITIONERS' DESCRIPTION*—"[L]ack of mental health treatment being given to mentally ill inmates in a county jail amounted to deliberate indifference." (U.S. Br. 22a) *COMMENTS*—Found that pretrial detainees at Allegheny County Jail are entitled to psychiatric care when needed. 487 F. Supp. at 642-43. Lack of psychiatric care in county jail amounted to deliberate indifference. *Id.* at 643.
17.	***James v. Wallace*, 382 F. Supp. 1177 (M.D. Ala. 1974)** *PETITIONERS' DESCRIPTION*—"[D]enying defendants' motion to dismiss suit alleging that prisoners had been refused the opportunity to rehabilitate themselves, that prisoners had been arbitrarily and capriciously assigned to units which have no treatment facilities for mental or physical disabilities, and that unreasonable restrictions had been placed on prisoners' visitation rights." (U.S. Br. 23a) *COMMENTS*—Class action on behalf of all inmates currently incarcerated in units of the Alabama Correctional Institutions System as a result of felony convictions. 382 F. Supp. at 1178. Class plaintiffs sought declaratory and injunctive relief for prison conditions without adequate treatment, reform, or rehabilitation, claiming this violated their rights under the Eighth and Fourteenth Amendments. *Id.* Court found that State must justify denial of rehabilitation services to some when it has undertaken to provide such services to others. *Id.* at 1181-82.

	Case Analysis
19.	***Kendrick v. Bland*, 541 F. Supp. 21 (W.D. Ky. 1981)** *PETITIONERS' DESCRIPTION*—"[V]iolation of Eighth Amendment where mentally ill and impaired inmates confined to prison's "special needs unit" were subject to unwarranted uses of physical force and brutality by prison guards." (U.S. Br. 21a) *COMMENTS*—Class action brought by prisoners at Kentucky State Penitentiary regarding broad range of conditions, necessitating broad consent decree in areas such as crowding, vocational and educational programs, food service, due process for disciplinary procedures, religion, inmate mail, access to the courts, medical and mental health services, racial discrimination, and coercive informant system led to favoritism of some inmates and abuse (rape, etc.) of others. 541 F. Supp. at 22, 27-49. Disability not a mentioned as a factor in favoritism. Demonstrates availability of existing remedies, as court required defendants to submit plan for correcting deficiencies in handicapped accessibility in accordance with the Rehabilitation Act. *Id.* at 39-40.
20.	***Knecht v. Gillman*, 488 F.2d 1136 (8th Cir. 1973)** *PETITIONERS' DESCRIPTION*—"[A]dministration of drugs that induced vomiting to nonconsenting inmates on the basis of alleged violations of behavior rules constituted cruel and unusual punishment." (U.S. Br. 8a) *COMMENTS*—Enjoined use of injections that induced vomiting as punishment or disciplinary measure in State mental institution. 488 F.2d at 1140-41. Population included civilly committed as well as prisoners. *Id.* at 1138. Institution at issue was the Iowa Security Medical Facility, not a prison. *Id.* (quoting Iowa Code § 223.1 (1973)).

	Case Analysis
8.	***Cortes-Quinones v. Jimenez-Nettleship*, 842 F.2d 556 (1st Cir.)** *PETITIONERS' DESCRIPTION*—"Eighth Amendment violated when mentally ill prisoner was housed in a severely overcrowded cell where he was ultimately killed and dismembered by other inmates." (U.S. Br. 6a) *COMMENTS*—Mentally disturbed inmate transferred to extremely overcrowded prison along with 39 other inmates after prison riot. 842 F.2d at 558. He was killed. Not a claim that the State discriminated against plaintiff; injuries came from conduct of other inmates. Space per prisoner was 15.5 sq. ft. *Id.* Claimed injury occurred in Arecibo District Jail. *Id.*
9.	***Cummings v. Roberts*, 628 F.2d 1065, 1068 (8th Cir. 1980)** *PETITIONERS' DESCRIPTION*—"[J]ail inmate's allegation 'that because the defendants failed to give him a wheelchair, he was forced to crawl on the floor' stated Eighth Amendment claim." (Goodman Br. 29 n.14.) *COMMENTS*—Pretrial detainee at St Louis County Jail. 628 F.2d at 1066. Non-disabled inmate being detained for highly publicized scalding death of 2-year old received back injury while in custody and was transferred to protective custody for his safety. *Id.* at 1067. Court reversed grant of summary judgment awarded to defendants and remanded to trial court, finding that defendants' evidence was insufficient to support summary judgment against plaintiff's Eighth Amendment claim for deliberate indifference in connection with medical care for back injury. *Id.* at 1068.

	Case Analysis
12.	***Duran v. Anaya*, 642 F. Supp. 510 (D.N.M. 1986)** *PETITIONERS' DESCRIPTION*—"[I]nmates were entitled to a preliminary injunction prohibiting implementation of proposed staff reductions with respect to medical care, mental health care, and security, where there was no evidence that staffing reductions of the magnitude contemplated would permit the maintenance of minimal constitutional standards in those areas." (U.S. Br. 20a) *COMMENTS*—Court granted preliminary injunction to *prevent* proposed staff reductions that would probably not permit maintenance of minimal constitutional standards in medical care, mental health care, and security. Court concerned itself with prison's "obligation to provide a level of medical care that is reasonably designed to meet the routine and emergency health care needs of prisoners . . . with respect to medical care, dental care, and psychiatric care." 642 F. Supp. at 575. Court specifically addressed itself to the potential harms to the "routine and emergency" needs of the entire prison population. *Id.*
13.	***Eng v. Smith*, 849 F.2d 80 (2d Cir. 1988)** *PETITIONERS' DESCRIPTION*—"[U]pholding grant of preliminary injunction based on constitutionally inadequate provision of medical care to mentally ill inmates." (U.S. Br. 6a) *COMMENTS*—Affirming grant of preliminary injunction where district court had sufficient evidence of "systemic deficiencies in Attica's mental health system." 849 F.2d at 82-83. Specifically declined to decide whether problems met "deliberate indifference" standard. *Id.*

Case Analysis	
18.	***Johnson v. Hardin County*, 908 F.2d 1280, 1284 (6th Cir. 1990)** *PETITIONERS' DESCRIPTION*—"Eighth Amendment violated when prisoner disabled by mobility impairment was denied prescribed medical care and denied access to a shower for 40 days after injuring himself in a fall." (U.S. Br. 5a) "[D]enial, *inter alia*, of crutches to inmate with a disability violated Eighth Amendment." (Goodman Br. 28 n.14) *COMMENTS*—Hardin County Detention Center, Kentucky. Inmate had leg injuries that impaired his mobility. 908 F.2d at 1282. Jail officials did not make requested accommodations to his impaired mobility. *Id.* at 1282-84. After falling in prison shower, he required medical treatment. *Id.* Jail officials did not adequately provide needed medical treatment. *Id.* Court affirmed jury verdict only as to individual defendants' deliberate indifference, but specifically found that county was not liable because plaintiff had not produced sufficient evidence to show policy or custom of mistreatment. *Id.* at 1285-88.

	Case Analysis
24.	***Leach v. Shelby County Sheriff*, 891 F.2d 1241, 1243-44 (6th Cir. 1989)** *PETITIONERS' DESCRIPTION*—"[C]ounty jail maintained policy of deliberate indifference to serious medical needs of paraplegic inmates in violation of Eighth Amendment where paraplegic inmate was not bathed regularly, was forced to sit in his own urine, and was not given necessary help for bowel movements." (U.S. Br. 6a) "[S]everal days' denial of appropriate mattress, bathing, and catheter supplies to inmate with paraplegia violated Eighth Amendment" (Goodman Br. 28 n.14) *COMMENTS*—Shelby County Jail, Tennessee. 891 F.2d at 1243. Affirmed award of $10,000 to plaintiff against "the Sheriff in his official capacity for policy or custom of deliberate indifference sufficient to establish the liability of the County." *Id.* at 1250. "Leach's suit against the Mayor and the Sheriff of Shelby County in their official capacities is, therefore, essentially and for all purposes, a suit against the County itself." *Id.* at 1241.
25.	***Lee v. McManus*, 543 F. Supp. 386 (D. Kan. 1982)** *PETITIONERS' DESCRIPTION*—"[P]reliminary injunction granted in suit brought by paraplegic inmate alleging that he had received improper medical care in violation of the Eighth Amendment." (U.S. Br. 21a) *COMMENTS*—Petitioner's description accurate; case involved preliminary injunctive relief.

	Case Analysis
28.	***Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984)** *PETITIONERS' DESCRIPTION*—"State subjected individuals awaiting civil commitment proceedings to unconstitutional conditions of confinement in county jails." (U.S. Br. 7a) *COMMENTS*—County jails, not state prisons. 744 F.2d at 1454. Class action on behalf of non-convict mentally ill individuals awaiting involuntary civil commitment proceedings, challenging their detention in county jails. Completely irrelevant to question whether States discriminate against disabled prisoners. Court specifically distinguished plaintiffs because they were awaiting civil commitment proceedings and therefore not in jail for punishment, explaining: "A court must decide whether the restriction is imposed to punish or whether it is simply an incident of legitimate governmental purpose" and found that the conditions applied to these detainees amounted to punishment and therefore violated due process. *Id.* at 1463.

	Case Analysis
29.	***Mackey v. Procunier*, 477 F.2d 877 (9th Cir. 1973)** *PETITIONERS' DESCRIPTION*—"[F]inding that disabled inmate sufficiently alleged being subjected to cruel and unusual punishment where inmate claimed he received without his consent a "fright drug" that caused him to regularly suffer nightmares and awaken unable to breathe." (U.S. Br. 8a) *COMMENTS*—Reversed grant of FED. R. CIV. P. 12(b)(6) motion to dismiss, where plaintiff inmate had gone voluntarily to state medical facility for electroshock treatment and was given a "fright drug" there without his consent. Court found possibility that prison conducted medical experimentation on plaintiff inmate without consent raised constitutional questions. 477 F.2d at 878.
30.	***Maclin v. Freake*, 650 F.2d 885, 889 (7th Cir. 1981)** *PETITIONERS' DESCRIPTION*—"[C]olorable claim for relief under the Eighth Amendment where paraplegic prisoner alleged that he had received no physical therapy for his condition over a period of some 11 months since he had entered prison." (U.S. Br. 7a) "[R]eversing grant of summary judgment to State prison official in case where inmate with paraplegia claimed that he had been denied any physical therapy for almost a year." (Goodman Br. 30 n.15) *COMMENTS*—Court reversed award of summary judgment to defendant, prison medical administrator, holding that paraplegic inmate stated colorable claim for Eighth Amendment violation by alleging lack of physical therapy for eleven months. 650 F.2d at 889. Also held that lower court should not have denied plaintiff's request for appointed counsel. *Id.*

	Case Analysis
21.	***Laaman v. Helgemoe*, 437 F. Supp. 269 (D.N.H. 1977)** *PETITIONERS' DESCRIPTION*—"[P]sychiatric treatment at prison was "basically nonexistent" in spite of the fact that as much as *40%* of inmate population needed intensive psychiatric treatment." (U.S. Br. 23a) *COMMENTS*—Class action on behalf of entire prison population detailing a multitude of deficiencies in conditions at entire facility. 437 F. Supp. at 275. In a 62-page opinion, court entered a 16-category order regarding aspects to be corrected. *Id.* at 325-31. Found medical services and facilities deficient as a whole, and found totality of conditions deficient. *Id.* at 324-25. Court specifically noted that information about mental illness at this prison "was based on national statistics concerning prison populations in general and not upon specific information concerning NHSP." *Id.* at 276 n.1.
22.	***LaFaut v. Smith*, 834 F.2d 389 (4th Cir. 1987)** *PETITIONERS' DESCRIPTION*—"[F]ailure to provide paraplegic inmate with an accessible toilet is cruel and unusual punishment." (U.S. Br. 6a-7a) "[F]ailure to provide appropriate toilet facilities and rehabilitation therapy to inmate with paraplegia violated Eighth Amendment." (Goodman Br. 28 n.14.) *COMMENTS*—Inmate was incarcerated in the **Federal** Correctional Institution, Butner, North Carolina. 834 F.2d at 389. Wheelchair-bound paraplegic was incarcerated with inaccessible toilet facilities. *Id.* at 390. Court held this was deliberate indifference that violated the Eighth Amendment. *Id.* at 394.

	Case Analysis
23.	***Langley v. Coughlin*, 715 F. Supp. 522, 540 (S.D.N.Y. 1989)** *PETITIONERS' DESCRIPTION*—"[T]riable issues of fact existed as to whether there had been inadequate medical care for the serious needs of mentally ill inmates in violation of the Eighth Amendment." (U.S. Br. 19a) "[D]enying state officials' motion for summary judgment on Eighth Amendment claim based, *inter alia*, on 'the failure to screen out from SHU those individuals who, by virtue of their mental condition, are likely to be severely and adversely affected by their placement there.'" (Goodman Br. 32 n.18) *COMMENTS*—Class action brought by all inmates in special housing unit in correctional facility. 715 F. Supp. at 531. Complained that mentally ill inmates were housed together with sane inmates and behavior of mentally ill inmates subjected all inmates to constitutionally impermissible conditions. *Id.* at 531, 543. Subclass of plaintiffs complained of deficient medical treatment. *Id.* Subclass of plaintiffs -- non-disabled inmates complained about having to live with arguably disabled inmates. Court adopted magistrate's report denying summary judgment to defendants and finding triable issues of fact, including possibility of systemic failure of medical care. *Id.* at 539-41. Court specifically noted that plaintiffs would need to demonstrate facts to support their claims. *Id.* at 560. In evaluating individual liability of officials, court noted "[i]t is not open to question that the Eleventh Amendment would bar a claim for money damages against the State itself or its agents." *Id.* at 550.

	Case Analysis
26.	***Lightfoot v. Walker*, 486 F. Supp. 504 (S.D. Ill. 1980)** *PETITIONERS' DESCRIPTION*—"[H]ealth care system and environmental conditions and practices at state prison violated Eighth and Fourteenth Amendments where they led to unnecessary suffering due to deliberate indifference and misadministration of prison officials which was so gross as to be deemed wilful." (U.S. Br. 22a) *COMMENTS*—Class action "for the benefit of all prisoners . . . seeking declaratory and injunctive relief [] to stop state prison officials from maintaining an inadequate health care system for the prisoners . . . ." 486 F. Supp. at 505. Prison facility built in 1878. Some prisoners double-celled with 18 to 32 square feet of space per inmate. "Based on the totality of the evidence, the Court finds that these inadequacies result in a health care delivery system so wholly inadequate as to lead to unnecessary suffering to the plaintiff class." *Id.* at 525.

	Case Analysis
27.	***Littlefield v. Deland*, 641 F.2d 729 (10th Cir. 1981)** *PETITIONERS' DESCRIPTION*—"Due Process violation where mentally ill inmate was confined without notice or an opportunity to be heard for 56 days in solitary confinement in a 'strip cell' with no windows, no interior lights, no bunk, no floor covering, no toilet beyond a hole in the floor, no articles of personal hygiene, no opportunity for recreation outside cell, no access to reading materials, and frequently no clothing or bedding material." (U.S. Br. 7a-8a) *COMMENTS*—Found that treating a pretrial detainee in this manner amounted to punishment that could not be constitutionally imposed without a determination of guilt and indicated that, even then, conditions would violate Eighth Amendment. 641 F.2d at 731-32. Found that County had failed to implement an effective procedure to assure that mentally-ill inmates are not kept in such facilities for unreasonable periods of time and found a "policy of indifference." *Id.* at 732.

	Case Analysis
31.	***Mandel v. Doe*, 888 F.2d 783 (11th Cir. 1989)** *PETITIONERS' DESCRIPTION*—"[E]vidence established that physician assistant's treatment of prisoner after he severely injured his leg constituted deliberate indifference to prisoner's serious medical needs." (U.S. Br. 6a) *COMMENTS*—Inmate at a "county road prison" in Escambia County, Florida, jumped off the bed of a work-detail pick-up truck and injured his leg. 888 F.2d at 785. Brought § 1983 action complaining that lack of appropriate medical treatment for injury constituted deliberate indifference. *Id.* at 787.
32.	***Maynard v. New Jersey*, 719 F. Supp. 292 (D.N.J. 1989)** *PETITIONERS' DESCRIPTION*—"[F]amily of deceased inmate who brought suit against prison medical personnel for failure to diagnose and refusal to treat inmate's AIDS stated a viable Section 1983 claim against prison medical personnel." (U.S. Br. 19a) *COMMENTS*—Court held Eleventh Amendment barred claim against State for failure to diagnose and treat inmate with AIDS. 719 F. Supp. at 296. Granted motion to dismiss as to State but denied as to prison medical personnel. *Id.* at 296-97.
33.	***Miranda v. Munoz*, 770 F.2d 255, 259 (1st Cir. 1985)** *PETITIONERS' DESCRIPTION*—"[F]ailure to provide medications for epilepsy, which caused prisoner's death, violated Eighth Amendment." (U.S. Br. 7a) *COMMENTS*—Pretrial detainee at Arecibo District Jail. 770 F.2d at 257.

	Case Analysis
34.	***Mitchell v. Untreiner*, 421 F. Supp. 886, 891 (N.D. Fla. 1976)** *PETITIONERS' DESCRIPTION*—"Eighth Amendment violation where no psychological or psychiatric treatment available for inmates with mental illness." (Goodman Br. 30 n.15) *COMMENTS*—Class action seeking declaratory and injunctive relief for inmates incarcerated in Escambia County Jail, Florida. Court held that "the punitive and inhumane conditions of confinement within the Escambia County Jail clearly violate inmates' rights under the First, Fourth, Fifth, Sixth, Eighth, Ninth and Fourteenth Amendments . . . The totality of circumstance of confinement . . . and the sub-human level of existence imposed there violates all civilized concepts of human rights." 421 F. Supp. at 893, 896. Jail so crowded that "Mitchell, a fifteen year old juvenile male, had been . . . incarcerated awaiting trial with other juvenile males in a cell constructed to sleep three persons but which housed as many as eleven persons . . . One 8' x 8' four bed cell sometimes housed as many as six inmates necessitating that two of them sleep on the floor next to the toilet, sometimes without a mattress." *Id.* at 889. "Indigent inmates are not provided with the basic necessities of hygiene . . . Maintaining sanitation of the cells is left up to the inmates . . . Mice and roaches are infested throughout the building." *Id.* "The Jail is entirely without medical, nursing, psychological, or dental staff on the premises. Jail personnel with only some first aid training arbitrarily decide whether inmates need medical treatment." *Id.* at 890. Also noting lack of psychological or psychiatric treatment, limited visiting hours, censoring of inmate reading materials, absence of legal research materials, lack of exercise and other programs, and insufficient number of isolation cells. *Id.* at 891-93.

	Case Analysis
35.	***Mullen v. Smith*, 738 F.2d 317, 318 (8th Cir. 1984)** *PETITIONERS' DESCRIPTION*—"[I]nmate's allegation that prison officials forcibly removed him from his bed and ordered him to walk—after he had suffered a spinal injury that left him unable to walk—stated a claim for violation of the Eighth Amendment." (Goodman Br. 33 n.21) *COMMENTS*—Prisoner in **Federal** Correctional Institution in El Reno, Oklahoma, prison facility complained of deliberate indifference. 738 F.2d at 317.
36.	***Negron v. Preiser*, 382 F. Supp. 535 (S.D.N.Y. 1974)** *PETITIONERS' DESCRIPTION*—"[P]reliminary injunction issued in suit brought by patient-inmates challenging the constitutionality of the hospital's use of isolation cells." (U.S. Br. 23a) *COMMENTS*—Class action challenging conditions of confinement at Mattewan State Hospital, New York. Court entered injunction only to require extensive record-keeping "to ensure and document that the decision to use the isolation cell is based on explicit criteria, is reviewed at the requisite brief intervals, and is, where possible, supplemented by other forms of treatment," but declined to find their condition violated Eighth Amendment. 382 F. Supp. at 543. Court declined to require specific rules for patient behavior in connection with use of isolation cells, and declined to require a due process type of hearing before imposition of seclusion. *Id.* Preliminary-injunction ruling, not on the merits: "[T]he Court at this time declines to hold that the conditions of the isolation cells violate the Eight[h] Amendment." *Id.*

Case Analysis	
37.	***Negron v. Ward*, 458 F. Supp. 748 (S.D.N.Y. 1978)** *PETITIONERS' DESCRIPTION*—"[S]uperintendent of state prison hospital had a duty to provide psychiatric treatment to patients which could not be withheld as a form of discipline without due process." (U.S. Br. 22a) *COMMENTS*—Plaintiff-inmates were confined in the Mattewan State Hospital for the Criminally Insane. 458 F. Supp. at 749. Following an altercation, plaintiffs were removed from their open ward and confined in a secluded ward. *Id.* at 750. Jury determined that this ward transfer was for the purpose of punishment. *Id.* at 761. Not a claim for discrimination: Plaintiffs were mentally ill inmates housed among other mentally ill inmates who complained at being isolated for disciplinary reasons -- jury specifically found that inmates were secluded for punishment. *Id.* at 760-61. Does not establish constitutional violations that resulted from intentional discrimination on the basis of disability. Plaintiffs complained that they were deprived of their right to treatment without due process. Jury found in favor of plaintiffs and awarded compensatory damages. Court denied motion for JNOV, explaining that plaintiffs were entitled to a hearing before being deprived of their treatment. *Id.* at 755. Court held that plaintiffs had an entitlement to psychiatric treatment unimpeded by punitive confinement imposed without due process. *Id.* at 759.

	Case Analysis
38.	***Nelson v. Collins*, 455 F. Supp. 727 (D. Md. 1978)** *PETITIONERS' DESCRIPTION*—"Eighth Amendment violated when prison confined mentally ill inmates to isolation cells where they did not have adequate access to needed psychiatric or other medical treatment." (U.S. Br. 22a) *COMMENTS*—Class action brought by entire prison population, consisting of convicted felons who had committed "the most serious crimes," 455 F. Supp. at 728, seeking injunctive relief for overcrowding. Two inmates per 44 sq. ft. cell; only one inmate could move around at a time. *Id.* at 734. Court ordered defendants to seek solutions for overcrowding, found it violates Eighth Amendment. *Id.* at 730-31. Court noted "no constitutional right to habilitation or rehabilitation" and found psychiatric treatment met minimal constitutional standards except for isolation cells. *Id.* at 736. Ordered that isolation cells should be used "only for mentally deranged inmates." *Id.* Does not establish that inmates were placed in isolation cells without rational basis.

	Case Analysis
39.	***Newman v. Alabama*, 349 F. Supp. 278, 284 (M.D. Ala. 1972)** *PETITIONERS' DESCRIPTION*—"The fate of those many prisoners who are mentally ill or retarded deserves special mention. Mental illness and mental retardation are the most prevalent medical problems in the Alabama prison system. It is estimated that approximately 10 percent of the inmates are psychotic and another 60 percent are disturbed enough to require treatment. To diagnose and treat these almost 2400 inmates, the Board of Corrections employs one clinical psychologist, who works one afternoon each week at the [Medical and Diagnostic Center]. There are no psychiatrists, social workers, or counselors on the staff. Severe, and sometimes dangerous, psychotics are regularly placed in the general population. If they become violent, they are removed to lockup cells which are not equipped with restraints or padding and where they are unattended. While some do obtain interviews with qualified medical personnel and a few are eventually transferred for treatment to a state mental hospital, the large majority of mentally disturbed prisoners receive no treatment whatsoever. It is tautological that such care is constitutionally inadequate." (U.S. Br. 24a-25a) "Eighth Amendment violation where 'the large majority of mentally disturbed inmates receive no treatment whatsoever.'" (Goodman Br. at 30 n.15) *COMMENTS*—Class action on behalf of all prisoners in Alabama penal system (4000 inmates). "There is a degree of neglect of basic medical needs of prisoners that could justly be called 'barbarous' and 'shocking to the conscience.'" 349 F. Supp. at 281. "Perhaps the most deplorable deprivation [is] the product of the

	Case Analysis
	knowing and intentional mistreatment of sick and injured inmates." *Id.* at 284. Granted extensive and detailed injunction against, *inter alia,* refusal or failure to provide adequate medical care to each inmate. *Id.* at 286-88.
40.	***Palmigiano v. Garrahy*, 443 F. Supp. 956, 975-976 (D.R.I. 1977)** *PETITIONERS' DESCRIPTION*—"The deliberate indifference displayed by the defendants to the serious medical needs of drug dependant inmates leads to unnecessary and inevitable suffering." (U.S. Br. 22a-23a) "[I]nadequate mental health care in state prison violated Eighth Amendment." (Goodman Br. 30 n.15.) *COMMENTS*—Class action on behalf of prisoners in Rhode Island Adult Correctional Institutions regarding broad range of deficient conditions in 100-year-old prison facility. "Together with the other unsanitary and dangerous conditions already detailed . . . [t]he grossly inadequate system of medical care, including psychiatric care, afforded inmates is part of the intolerable totality of conditions at the ACL which, as the Court has found violates inmates' Eighth and Fourteenth Amendment rights." 443 F. Supp. at 983. Ordered relief. "Plumbing throughout Maximum is unsanitary, inadequate, and an imminent danger to public health . . . Only cold water is available in inmate cells . . . Pipes are not equipped with vacuum breakers, creating an ever-present danger that waste water will back up into the fresh water system, even in the food preparation area . . . The damp conditions in the service

	Case Analysis
	areas are an ideal breeding ground for the swarming cockroaches, which exist in all stages of development . . . In the lavatories, the Court observed large pools of standing water on the floor, and apparently this is always present. There was a stench of urine coming from this water. The shower areas were filthy, covered with mold and mildew on the floors and the walls. Glass, trash, and dead cockroaches are everywhere on the shower floors." *Id.* at 961. "Rehabilitation . . . is impossible under the Department's approach . . . ." *Id.* at 966. "[T]he system of medical care delivery at the ACL is inadequate by any accepted standard to meet the inmates' routine and emergency health care needs. " *Id.* at 973.
41.	***Parrish v. Johnson*, 800 F.2d 600, 605 (6th Cir. 1986)** *PETITIONERS' DESCRIPTION*—"[P]rison guard repeatedly assaulted paraplegic inmates with a knife, forced them to sit in their own feces, and taunted them with remarks like 'crippled bastard' and '[you] should be dead.'" (U.S. Br. 7a, 30, 49) "[P]rison guard violated Eighth Amendment when he assaulted inmate with paraplegia, forced him to sit in his own feces, taunted him with a knife, extorted food from him, and verbally abused him." (Goodman Br. 30 n.21) *COMMENTS*—Sixth Circuit reversed and remanded trial court's award of only nominal damages for constitutional violations for one prison guard's cruelty to two paraplegic inmates. Declined to evaluate one inmate's claim under Fourteenth Amendment because "the Fourteenth Amendment provides a prisoner with no greater protection than the Eighth Amendment." 800 F.2d at 604 n.4.

Case Analysis	
42.	***Ramos v. Lamm*, 639 F.2d 559, 577-78 (10th Cir. 1980)** *PETITIONERS' DESCRIPTION*—"[D]enial of adequate mental health care, resulting in suffering, suicides, and self mutilation by inmates violated Eighth Amendment." (Goodman Br. 30 n.15) *COMMENTS*—Class action on behalf of "all persons who are now or in the future may be incarcerated in the maximum security unit of the Colorado State Penitentiary at Canon City, Colorado." 639 F.2d at 562. Upheld finding that "'the blatant inadequacy of health care is perhaps the most appalling' of all the problems . . . and that the State has 'been aware of grave and systemic deficiencies in the medical care delivery system . . . for years'" and that lack of medical and mental health care violated Eighth Amendment. *Id.* at 574-78. "[I]n some instances inmates are not provided with enough cleaning supplies to allow them to adequately clean their own cells." *Id.* at 570. Court found inadequate ventilation, stagnant air, excessive mold and fungus growth, and rodent and insect infestation. *Id.* at 569. Upheld finding that "conditions in the food service areas . . . fail to meet any known public health standards." *Id.* at 570-71. Upheld finding that "the State has failed to reasonably protect inmates from constant threats of violence and assaults from other inmates and that this failure violates the inmates' constitutional rights under the Eighth Amendment." *Id.* at 574. Tenth Circuit set aside trial court's ruling that visitation restrictions were too harsh (*id.* at 578-81), affirmed the trial court's decision that restrictions on prisoners' mail were invalid under the First and Fourteenth Amendments (*id.* at 581-82), and sustained the trial court's ruling that, because of conditions of and regulations in the libraries, and the lack of alternative methods, the State had denied the inmates meaningful access to the courts in violation of the Constitution. *Id.*

	Case Analysis
43.	***Ruiz v. Estelle*, 503 F. Supp. 1265 (S.D. Tex. 1980), *aff'd in part and reversed in part*, 679 F.2d 1115 (5th Cir. 1982)** *PETITIONERS' DESCRIPTION*—"[A]lthough *10-15%* of prison population was mentally retarded, prison did not provide any assistance to such inmates; as a result, mentally retarded inmates were denied access to programs that could lead to early release and to education programs, were subject to more discipline than other inmates, and were more vulnerable to attacks and injuries." (U.S. Br. 21a) "In 1980, the United States District Court for the Southern District of Texas ruled, on the basis of an extensive record, that the Texas Department of Corrections violated the Eighth Amendment rights of inmates with physical disabilities by delaying the provision and maintenance of wheelchairs, hearing aids, and other assistive devices, by refusing to provide wheelchair-accessible cells, and by refusing to provide accessible toilet and shower facilities." (Goodman Br. 27) "Eighth Amendment violation where 'the right of physically handicapped inmates to minimal levels of medical care has been systematically ignored.'" (Goodman Br. 30 n.15) "[F]ailure to protect inmates with mental retardation from abuse and physical harm by other inmates violated Eighth Amendment." (Goodman Br. 32 n.19) "[F]ailure to provide assistance necessary to enable inmates with mental retardation to understand and participate in disciplinary proceedings violated Constitution." (Goodman Br. 33 n.22)

Case Analysis	
	COMMENTS—Class action on behalf of all past, present, and future inmates of the Texas Department of Corrections (25,575 inmates). 503 F. Supp. at 1274-75. Court issued 125-page opinion detailing myriad poor conditions and a number of constitutional violations and issuing decree to address them. Fifth Circuit affirmed in part and reversed in part. Plaintiffs alleged "systemic constitutional violations" including "a variety of conditions and practices in TDC prisons violate the eighth and fourteenth amendments to the Constitution of the United States . . . [such as] overcrowding, security and supervision, health care, discipline, access to the courts, and other general conditions of confinement." *Id.* at 1276-77. In typical cells, "[t]he usable, unobstructed space in the cell amounts to an area approximately seven and one-half feet long and three feet wide, totaling 22.5 square feet. So cramped is such a cell that two standing persons must squeeze by each other to pass, and an average man can stand in the center of the cell and touch both walls with outstretched arms . . . [I]nmates assigned to these forty-five square foot TDC cells can do little more than sit or lie on their bunks or the floor, or use the sanitary facilities." *Id.* at 1278. "Occasionally, four- and sometimes even five-inmates are assigned to one cell . . . With five inmates, three must sleep on the floor, squeezed between the bars in front and the toilet in the rear of the cell. Inmates have been compelled to endure this latter type of confinement for days or even weeks at a time . . . ." *Id.* "Unwarranted staff brutality at TDC violates not only the eighth amendment but the fourteenth amendment as well, inasmuch as it constitutes punishment devoid of the benefits of due process of law." *Id.* at 1305.

Case Analysis	
	Medical care system "persistently and predictably fails adequately to provide for the legitimate medical needs of the prison population." *Id.* at 1307.
44.	***Sites v. McKenzie*, 423 F. Supp. 1190 (N.D. W. Va. 1976)** *PETITIONERS' DESCRIPTION*—"[S]tate statute precluding inmates confined to mental institutions from parole eligibility violated Equal Protection Clause." (U.S. Br. 23a) *COMMENTS*—Found due process safeguards in statute used to commit prisoners to mental institution to be "procedurally and substantively deficient in comparison to the protections . . . under the civil commitment statute." 423 F. Supp. at 1193. No rational basis for distinguishing between civilly insane and criminally insane. *Id.* at 1194. Equal protection violation also found where prisoners in mental hospitals did not have opportunity for parole at end of sentence unless recovered. *Id.* at 1194-95. Found violation of Rehabilitation Act where plaintiffs were executed from vocational rehabilitation opportunities because of mental illness. *Id.* at 1197. Not a claim for disability discrimination. Here, mentally disabled inmates were seeking treatment equal to that of civilly committed mentally ill, or same treatment as similarly disabled non-prisoners.

	Case Analysis
45.	***Sykes v. Kreiger*, 451 F. Supp. 421, 426 (N.D. Ohio 1975)** *PETITIONERS' DESCRIPTION*—"[I]n inmate suit seeking relief for violations of constitutional rights, county jail officials ordered to submit a plan for the creation of a psychiatric ward for the inmates." (U.S. Br. 22a) *COMMENTS*—Class action regarding variety of conditions in Cuyahoga County Jail, brought on behalf of "persons confined at Cuyahoga County Jail . . . for reasons other than as punishment resulting from a conviction of a criminal offense." 451 F. Supp. at 423. Crowding conditions provide between 13 and 35 sq. ft. and 140.2 cubic ft. sleeping area per inmate. *Id.* at 423. Found Fifth and Fourteenth Amendment violations as a result of crowding. *Id.* at 424. Inmates sought wide variety of rights, including counsel-substitute for disciplinary hearings, mail rights in isolation, and additional rights in connection with visitation and telephone calls. *Id.* at 423.

	Case Analysis
46.	***Talley v. Stephens*, 247 F. Supp. 683, 687 (E.D. Ark. 1965)** *PETITIONERS' DESCRIPTION*—"[F]orcing inmates with 'serious physical handicaps' to perform labor that they were physically unable to perform, and denying access to medical care, violated Eighth Amendment." (Goodman Br. 30 n.15) *COMMENTS*—Sought injunction against summary corporal punishment. Inmates forced to harvest crops and subjected to summary whipping if work insufficient by subjective and unrestrained judgment of assistant wardens. Not a claim for disability discrimination. Court notes that two plaintiffs were "laboring under serious physical handicaps [and] that their physical condition has been classified as 'poor' by the prison physician" (247 F. Supp. at 687), but did not specify further. Plaintiffs also claimed denial of access to the courts.

Case Analysis	
47.	***Thompson v. City of Portland*, 620 F. Supp. 482, 485-87 (D. Me. 1985)** *PETITIONERS' DESCRIPTION*—"[P]olice violated the constitutional rights of a blind diabetic who was in insulin shock by arresting him, transporting him on floor of police cruiser, jailing him, and ignoring his explanation that he was in insulin shock, despite fact that he wore a MedicAlert necklace and carried a white cane." (U.S. Br. 20a) *COMMENTS*—Not discrimination in prison; plaintiff's complaint against City of Portland police arose from events surrounding his arrest. Not purposeful discrimination; officers' mistreatment occurred because they did *not* recognize he had a disability. Specifically noted that plaintiff was not incarcerated and therefore 8th Amendment did not apply. 620 F. Supp. at 488. Found substantive due process violation because police officer's (state's) conduct shocked the conscience. *Id.*

	Case Analysis
48.	***Tillery v. Owens*, 719 F. Supp. 1256, 1302-03 (W.D. Pa. 1989), *aff'd*, 907 F.2d 418 (3d Cir. 1990)** *PETITIONERS' DESCRIPTION*—"[P]rison officials showed deliberate indifference to inmates' medical, dental, and psychiatric care needs, in violation of the Eighth Amendment, where, due to overcrowding, officials had failed to provide adequate staffing and equipment, and failed to maintain an environment conducive to treatment of serious medical illness." (U.S. Br. 19a) "[I]nadequate care of 'serious mental illness' violated Eighth Amendment." (Goodman Br. 30 n.15) *COMMENTS*—Class action on behalf of inmates at State Correctional Institution at Pittsburgh. "[W]e find that nearly every aspect of SCIP inadequate, falling far below constitutional standards. In fact . . . we might very well order that SCIP be closed immediately; it is an overcrowded, unsanitary, and understaffed fire trap." 719 F. Supp. at 1259. Inmates double-celled in 8x7 cells. In some, "inmates . . . can do little more than lie or sit on their bunks or desks." *Id.* at 1264. Did find psychiatric observation cells to be "the most wanton and unnecessary infliction of pain we encountered" because unsanitary. *Id.* at 1304.

Case Analysis	
49.	***Vitek v. Jones*, 445 U.S. 480 (1980)** *PETITIONERS' DESCRIPTION*—"Due process protections required to transfer prisoner to state mental hospital." (U.S. Br. 1a, 35 n.30, 37) "Due process applies 'when the State seeks to transfer an inmate to a "supermax" facility or a psychiatric hospital.'" (Goodman Br. 18) *COMMENTS*—Held that prisoners are entitled to due process protections prior to involuntary transfer to mental hospital. No claim that prisoners were being transferred because of intentional, irrational State discrimination.

	Case Analysis
50.	***Waldrop v. Evans*, 681 F. Supp. 840 (M.D. Ga. 1988)** *PETITIONERS' DESCRIPTION*—"[C]onsulting psychiatrist's decision to remove inmate from antipsychotic drug abruptly raised material question of fact as to psychiatrist's alleged deliberate indifference to inmate's medical needs; prison doctor's failure to contact psychiatrist after he learned of inmate's depression and attempts to lacerate his arm likewise raised material question of fact as to doctor's alleged deliberate indifference to inmate's medical needs." (U.S. Br. 20a) *COMMENTS*—Mentally ill inmate rendered himself totally blind and without testicles as a result of a series of self-mutilatory acts while in prison. Had seen a series of prison doctors and mental health professionals and had received treatment along the way. Court granted summary judgment to nine individual defendants, including some health professionals and the high-ranking prison administrators that had been named, as to plaintiff's deliberate indifference claims. 681 F. Supp. at 862. Denied summary judgment to two of the doctors, finding fact questions as to treatment decisions they made. *Id.* at 854-55. Court specifically found that psychiatric staffing was adequate. In explaining why Commissioner and Superintendent could not be found deliberately indifferent, court specifically found that "GDCC was adequately staffed with medical professionals including three staff physicians and one consulting psychiatrist." *Id.* at 849.

Case Analysis	
51.	***Wellman v. Faulkner*, 715 F.2d 269, 272-73 (7th Cir. 1983)** *PETITIONERS' DESCRIPTION*—"[D]enial of adequate psychiatric care to inmates with mental illness violated Eighth Amendment." (Goodman Br. 30 n.15) *COMMENTS*—Court found "evidence of general systemic deficiencies to establish that there is deliberate indifference to serious medical needs . . ." and deficient psychiatric care. 715 F.2d at 272. Found unconstitutional overcrowding. *Id.* at 274. Some inmates spend 22-23½ hours per day in cells with one 17 square feet of floor space. *Id.* Awarded $500 - $1000 in damages to each of three plaintiffs in compensation for specific instances of medical maltreatment, specifically noting these damages were "not for the general deficiencies in medical facilities and personnel." *Id.* at 275.

Case Analysis	
52.	***Williams v. Edwards*, 547 F.2d 1206, 1217 (5th Cir. 1977)** *PETITIONERS' DESCRIPTION*—"[U]pholding finding of Eighth Amendment violations where prison provided no mental health care despite finding that 40% of inmates would benefit from psychiatric treatment." (U.S. Br. 8a) *COMMENTS*—Original complaint alleged racial discrimination against minority inmates and that "conditions at the prison violated the eighth and fourteenth amendment rights of the prison population as a whole." 547 F.2d at 1208. Affirmed district court finding that totality of conditions violated Eighth Amendment. *Id.* at 1211. Affirmed decision that level of medical care violated Eighth Amendment and due process clause of the and Fourteenth Amendment. *Id.* at 1218-19. Medical care entirely deficient, *e.g.*, pharmacist not trained or licensed, dental clinic not inspected or accredited, "filthy" emergency equipment, unsupervised inmates performing sutures, physical therapy department whirlpool occupied by fish being kept fresh prior to eating them. Remanded crowding claims. *Id.* at 1214-15. Normal cell size was 6 x 8 feet in some cases. *Id.* at 1215.

	Case Analysis
53.	***Yarbaugh v. Roach*, 736 F. Supp. 318 (D.D.C. 1990)** *PETITIONERS' DESCRIPTION*—"[P]reliminary injunction granted to inmate with multiple sclerosis who was not provided with assistance in daily life, as a result of which he had not showered in many months and had fallen several times while transferring between his wheelchair and his bed." (U.S. Br. 18a) *COMMENTS*—Plaintiff incarcerated in D.C. Detention Facility Infirmary had multiple sclerosis and sued for adequate accommodations and medical treatment.
54.	***Young v. Harris*, 509 F. Supp. 1111, 1113 (S.D.N.Y. 1981)** *PETITIONERS' DESCRIPTION*—"[S]tate prisoner's complaint stated an Eighth Amendment claim where, despite passage of over two years since a leg brace was ordered and over 16 months since the problem with his leg had been brought to the attention of the prison authorities, he had not been provided with a leg brace that was necessary to enable him to walk without substantial difficulty and discomfort." (U.S. Br. 28a) "[A]llegation that prison refused to provide disabled inmate 'with a leg brace that is necessary to enable him to walk without substantial difficulty' stated an Eighth Amendment claim." (Goodman Br. 29 n.14) *COMMENTS*—Denied motion for summary judgment where prisoner with "physical impairment" that required leg brace sought injunctive relief requiring prison officials to provide brace and also sought monetary damages. 509 F. Supp. at 1112-15. Court found plaintiff had sufficiently stated a claim for Eighth Amendment violation and also gave leave to amend complaint as to monetary damages. *Id.* Not a claim for intentional discrimination on the basis of disability.

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IN THE

Supreme Court of the United States

UNITED STATES,

Petitioner,

v.

STATE OF GEORGIA, ET AL.

Respondents.

TONY GOODMAN,

Petitioner,

v.

STATE OF GEORGIA, ET AL.,

Respondents.

On Writs Of Certiorari To The United States Court of Appeals For The Eleventh Circuit

BRIEF OF AMICI CURIAE TENNESSEE, ALABAMA, COLORADO, DELAWARE, IDAHO, MICHIGAN, NEVADA, NEW HAMPSHIRE, OKLAHOMA, OREGON, PUERTO RICO, WASHINGTON, WYOMING IN SUPPORT OF RESPONDENT

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QUESTION PRESENTED

Whether applying Title II of the Americans with Disabilities Act to every service, program and activity of a state prison—so States can be sued for money damages—is valid remedial legislation under § 5 of the Fourteenth Amendment.

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MISCELLANEOUS:

United States Dept. of Justice, Bureau of Justice Statistics, *Bulletin: Prisoners in 1996* (June 1997), http://www.ojp. usdoj.gov/ bjs/pub/pdf/ p96.pdf 17

United States Dept. of Justice, Bureau of Justice Statistics, *Special Report, Medical Problems of Inmates, 1997* (Jan. 2001), http:// www.ojp.usdoj.gov/bjs/pub/pdf /mpi97.pdf 17

INTERESTS OF *AMICI CURIAE*

As sovereign States, *amici* have a strong interest in preserving the principles of dual sovereignty that are "a defining feature of our Nation's constitutional blueprint." *Federal Mar. Comm'n* v. *South Carolina State Ports Auth.*, 535 U.S. 743, 751 (2002). One of those principles, as this Court has noted, is that "immunity from private suits [is] central to sovereign dignity." *Alden* v. *Maine*, 527 U.S. 706, 715 (1999). Given the importance of that immunity, *amici* have an intense interest in ensuring that Congress's power to abrogate it remains within the bounds set by the Constitution.

On a practical level, of course, *amici* are concerned here about Congress' attempt to abrogate their sovereign immunity as to private damage claims brought by prison inmates under Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131-12134 ("ADA"). Like most Americans, *amici* applaud the ADA's goal of ensuring that disabled citizens are protected from invidious discrimination and have every opportunity to participate fully in the benefits our society provides to other citizens. Prisons, however, are dangerous places for all who work or live there. Accordingly, as this Court stated recently "[t]he state's first obligation must be to ensure the safety of guards and prison personnel, the public and the prisoners themselves." *Wilkinson* v. *Austin*, 125 S. Ct. 2384, 2396 (2005). Recognition of private ADA claims has the potential to disrupt sound prison administration which, as this Court has often noted, is "peculiarly within the province and professional expertise of corrections officials." *Pell* v. *Procunier*, 417 U.S. 817, 827 (1974).

Of even greater importance are the potential implications of this case for future invocations of Congress' power to abrogate sovereign immunity under § 5 of the 14th Amendment. This case raises two profound questions about the proper exercise of that power.